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## **DEPARTMENT OF AGRICULTURE**

### **Food and Nutrition Service**

#### **7 CFR Parts 210, 215, 220 and 235**

**[FNS 2014-0011]**

**RIN 0584-AE30**

#### **Administrative Reviews in the School Nutrition Programs**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** As required by the Healthy, Hunger-Free Kids Act of 2010, this final rule revises the State agency's administrative review process in the National School Lunch Program and School Breakfast Program to establish a unified accountability system designed to ensure that school food authorities offering school meals comply with program requirements. The updated administrative review process includes new procedures, retains key existing requirements from the Coordinated Review Effort and the School Meals Initiative, provides new review flexibilities and efficiencies for State agencies, and simplifies fiscal action procedures. In addition to establishing a unified administrative review process, this rule requires State Agencies public disclosure of a summary of the administrative review results. These changes are expected to strengthen program integrity through a more robust, effective, and transparent process for monitoring school nutrition program operations.

**DATES:** This rule is effective [insert 60 days from date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Sarah Smith-Holmes, Child Nutrition Monitoring and Operations Support Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 605-3223.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Federally supported school nutrition programs are operated in 56 State Agencies (SAs) with more than 100,000 schools and Residential Child Care Institutions participating. Ensuring that the programs are carried out in the manner prescribed in statute and regulation is a key administrative responsibility at every level. Federal, State, and local program staff share in the responsibility to ensure that all aspects of the programs are conducted with integrity and that taxpayer dollars are being used as intended.

Improving program integrity and reducing improper payments has been a long-standing priority for the Department of Agriculture (USDA). Periodic program evaluations, including the Access, Participation, Eligibility and Certification (APEC) studies, show that improper payments result from errors made in the processes used to determine eligibility for free or reduced price meals, as well as from errors made during daily program operations and meal service. USDA and its SA partners have devoted significant time and effort in making system improvements and process reforms over the last several years, which are expected to improve integrity and deliver long-term reductions in error rates. These efforts include on-going technical assistance and implementation of reforms made by Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Along with provisions aimed at improving program access and delivering healthier school meals, HHFKA reforms support program integrity through strengthening the use of direct certification, providing for community eligibility, establishing professional standards

for school nutrition directors and staff, targeting a second review of applications in districts with high rates of application processing errors, and other provisions. USDA has already implemented the majority of these provisions through separate rulemaking. USDA has also established a new Office of Program Integrity for Child Nutrition Programs within the Food and Nutrition Service.

SAs that administer the school meal programs play a primary role in ensuring school food authorities (SFAs) are properly operating the programs. In addition to providing training and technical assistance, SAs are responsible for regularly monitoring SFA operations.

Nearly 25 years ago, in 1991 and 1992, USDA established regulations in 7 CFR 210.18 for an administrative review process to ensure SFAs complied with National School Lunch Program (NSLP) requirements. The process, known as Coordinated Review Effort (CRE), required SAs to conduct on-site administrative reviews of SFAs once every five years, and covered critical and general areas of review. The CRE review focused primarily on benefit eligibility, meal counting and claiming procedures, meal pattern and other general areas of compliance.

In 1995, SAs began to evaluate the nutritional quality of school meals under USDA's School Meals Initiative (SMI). A key component of the SMI review was the SA's nutrient analysis of the weekly school meals to determine compliance with Recommended Dietary Allowances for protein, calcium, iron and vitamins A and C; recommended minimum calorie levels; and the Dietary Guidelines for Americans.

More recently, section 207 of the HHSFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to make five changes to the administrative review requirements. The first three were implemented through the final rule, Nutrition Standards in the National School Lunch and School Breakfast Programs (77 FR 4088),

which was issued January 26, 2012. Those changes involved: (1) including both NSLP and School Breakfast Program (SBP) in the administrative review; (2) confirming that the weekly meals offered meet meal patterns and dietary specifications, which made the SMI obsolete; and (3) implementing a new 3-year review cycle, as opposed to the former 5-year cycle. This rule does not make changes to these three previously promulgated provisions, but instead updates the administrative review procedures to reflect these changes.

This final rule implements the remaining two statutory provisions from section 207 of HHFKA, requiring that:

1. The administrative review process be a unified accountability system in which schools in each local education agency (LEA) are selected for review based on criteria established by the Secretary; and
2. When any SFA is reviewed under this section, ensure that the final results of the review by the SA are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule largely reflects the updated administrative review process developed by the School Meals Administrative Review Reinvention Team (SMARRT), a 26-member team consisting of staff from Food and Nutrition Service (FNS) Headquarters, the seven Regional Offices, and SA staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas (representing each of the FNS Regions). FNS assembled the team to carry out HHFKA's mandate for a unified accountability system. The group worked together for one year to develop a simplified, unified monitoring process that includes new, flexible procedures and combines key aspects of the CRE and SMI reviews. The team also sought to create a

comprehensive monitoring process that includes all the school nutrition programs. Another priority was to simplify review procedures in response to SAs' needs.

The administrative review process to be codified in 7 CFR 210.18:

- Promotes overall integrity in the school nutrition programs by incorporating key requirements of the CRE and SMI reviews.
- Enables the SA to monitor essential requirements of Afterschool Snacks and Seamless Summer Option (SSO), the Special Milk Program (SMP), and the Fresh Fruit and Vegetable Program (FFVP) while conducting the administrative review.
- Includes recommended off-site monitoring approaches to offer SAs the ability to conduct reviews more efficiently by involving or consulting with off-site SA staff that have the skills needed to address specific monitoring areas.
- Includes risk-based approaches to enable the SA to target error-prone areas and focus its monitoring resources on SFAs and schools needing the most compliance assistance.
- Adds Resource Management to the general areas of review to better assess the financial condition of the nonprofit food service.
- Promotes consistency in the review process across all SAs.
- Includes updated, user-friendly forms; new risk assessment tools; and statistical sampling for increased SA efficiency. The forms and tools associated with the updated administrative review process will be addressed separately in a 60-day notice to be published in the Federal Register to align with the implementing administrative review rule.

The main focus of the updated administrative review under 7 CFR 210.18, continues to be the NSLP and SBP; however, the SA will perform review procedures in an updated and more

flexible manner. In an effort to create a unified accountability system, the SA will also be required to monitor the NSLP Afterschool Snacks and SSO, the FFVP, and the SMP in a manner that is consistent with the review process established in 7 CFR 210.18, as applicable. Detailed procedures for the administrative review process for the NSLP, SBP and other school meals programs are provided in the updated FNS Administrative Review Manual, which is a guidance document available at an online portal for SAs.

Most of the regulatory changes needed to update the administrative review process are found in 7 CFR 210.18. However, this rule makes changes throughout 7 CFR parts 210, 215 and 220 to achieve a unified accountability system for the school nutrition programs. A comparison chart at the end of the preamble summarizes the major changes in these parts.

In addition, the rule removes the definition of “large school food authority” from 7 CFR 210.18, where it is no longer needed, and adds it to 7 CFR 235.2, where it continues to apply.

This rule also makes several changes to the SFA regulatory requirements to complement the administrative review process. First, the SFA’s existing responsibilities in 7 CFR 210.14, are clarified with regard to indirect costs as they are to be specifically monitored by the SA under the updated administrative review process. Second, the SFA annual on-site monitoring of schools, required in 7 CFR 210.8, is strengthened by incorporating readily observable general areas of review, and by extending SFA on-site monitoring to the SBP. These changes are addressed in more detail later in the preamble.

This rule also makes a number of miscellaneous edits to remove obsolete provisions in 7 CFR 210, and to update wording to reflect the diversity of certification mechanisms used in school meal programs beyond the traditional collection of household applications. In addition, this rule updates the designation of a form in 7 CFR 210.5(d)(3), 7 CFR 210.20(a)(2), and 7 CFR

220.13(b)(2) by changing the references to the SF- 269, final Financial Status Report, to FNS-777, as approved by the Office of Management and Budget.

While this rulemaking action was underway, FNS allowed the following temporary review options for SAs:

1. Seek a waiver of the existing regulatory review procedures pursuant to section 12(l) of the NSLA, 42 U.S.C. 1760(l), and conduct reviews in accordance with the proposed administrative review process and the corresponding Administrative Review Manual; or
2. Continue with the existing review procedures under 7 CFR 210.18, and the corresponding Coordinated Review Effort Procedures Manual, with the understanding that upon publication of a final rule, the SA would be required to implement the updated administrative review process.

FNS provided the above flexibilities to SAs beginning in School Year 2013-2014. Almost all SAs requested the waiver and adopted the update administrative review process codified by this rule. This process, conducted on a shorter, 3-year cycle, has begun to generate a large volume of high value information that will strengthen FNS and SA integrity efforts over the long term. The data collected through the new review process will enhance the ability of FNS and SAs to monitor program performance. Just as importantly, the data will be a resource that FNS can use in its efforts to develop timely and targeted, evidence-based solutions to the recurring problems that give rise to improper payments.

Editorial note: The words “school” and “site” are used interchangeably in this rule, as applicable to each program, to refer to the location where meals are served. This rule also uses the term SFA to generally refer to the governing body responsible for school food service

operations. However, some of those responsibilities are fulfilled by the LEA or district, most notably the certification and benefit issuance process, indirect costs, competitive food sales, and local wellness policies. Use of the term SFA in this rule is not intended to imply the responsibilities reserved for the LEA have shifted to the SFA.

## **II. Summary of Public Comments**

The proposed rule was published in the Federal Register on May 11, 2015 (80 FR 26846) seeking to revise the SA's administrative review process to establish a unified accountability system designed to ensure that SFAs comply with the NSLP and SBP requirements. The rule was posted for comment on [www.regulations.gov](http://www.regulations.gov) and the public had the opportunity to submit comments on the proposal during a 60-day period that ended July 10, 2015.

FNS appreciates the valuable comments provided by stakeholders and the public. We received 48 public comments that addressed some aspects of administrative review. Although not all commenters identified their group affiliation or commenter category, most comments were submitted by:

- State agencies – 30 comments
- Advocates and Associations – 3 comments
- School Food Authorities/Schools - 1 comment

To view all public comments on the proposed rule, go to [www.regulations.gov](http://www.regulations.gov) and search for public submissions under docket number FNS-2014-0011.

By a large margin, the commenters supported the intent of the proposed rule. Two comments from individuals who did not identify with a SA or other organization supported the rule with no changes proposed. All of the comments from SAs, SFAs/schools, advocates and

associations, and all but three of the remaining comments from individuals who did not identify an affiliation supported the intent of the rule, but not as currently written. The comments suggested ways to revise the rule. Several SA comments utilized a form letter.

While there were no comments in opposition to the rule, three individual comments expressed negative views regarding the NSLP that are unrelated to the proposal. One of these comments focused on students' acceptance of the meal patterns, the second focused on students' non-acceptance of the meal patterns and a belief that all children should receive free meals, and the third addressed the need to increase awareness of what is required for a reimbursable meal.

Many comments expressed support for FNS' efforts to facilitate program monitoring and enhance integrity, and suggested changes that FNS can easily make consistent with the intent of the rule. Some comments seemed to result from a misunderstanding of what was written in the provisions and these areas will be addressed by making clarifications in the preamble or by editing the regulatory text to improve clarity for the readers.

The following is a summary of the public comments by key topic area:

### 3-Year Administrative Review Cycle

Proposed Rule: The 3-year review cycle was not included in the proposed rule to update the administrative review process.

Public Comments: Twenty-eight commenters addressed the 3-year administrative review requirement. Commenters expressed concern about the existing 3-year administrative review cycle and suggested returning to the previous 5-year review cycle. Some commenters who support returning to a 5-year review cycle nevertheless suggested that those SFAs with critical area violations or evidence of unallowable use of funds should be required to undergo a review

every three years for two cycles, or more frequently depending upon the serious nature of review findings.

FNS Response: The 3-year administrative review cycle will more strongly ensure program integrity, compliance with program rules, and that SFAs receive the technical assistance they need. The 3-year review cycle was implemented through the final rule Nutrition Standards in the National School Lunch and School Breakfast Programs (77 FR 4088), which was issued January 26, 2012. This rule does not propose changes to these previously promulgated provisions, but instead updates the language to reflect the 3-year administrative review cycle, which became effective in School Year 2013-2014. We have conducted nationwide training for SAs and continue to provide intensive technical assistance to support our State partners. In addition, many SAs have been able to utilize the available State Administrative Expense and HHFKA section 201 funds to facilitate more frequent monitoring. SAs that face exceptional challenges are able to submit, until June 30, 2016, a request for a one-time waiver of the 3-year administrative review cycle to extend no later than June 30, 2018.

Accordingly, this final rule does not include changes to the 3-year review cycle that is already established in 7 CFR 210.18(c).

#### Transparency Requirement

Proposed Rule: The SA must post a summary of the most recent administrative review results for each SFA on the SA's public website. The review summary must cover eligibility and certification review results, an SFA's compliance with the meal patterns and the nutritional quality of school meals, the results of the review of the school nutrition environment (including food safety, local school wellness policy, and competitive foods), compliance related to civil

rights, and general program participation and must be available in a format prescribed by FNS not later than 30 days after the SA provides the final results of the review to the SFA. The SA must also make a copy of the final administrative review report available to the public upon request.

Public Comments: Twenty-seven commenters addressed the proposed transparency requirement. While several commenters did not support the public posting of administrative review results, the majority of comments on this provision supported the public posting of a summary of the administrative review results, and suggested shifting the responsibility for this requirement to the local (LEA/SFA) level, as there are public notification requirements already in place for other program elements and parents and interested public are likely to access their local school districts website more readily than the SA website. Commenters recommended ways to implement this transparency requirement, and confirmed that a sample template and format for public posting should be provided.

FNS Response: FNS recognizes the concerns about requiring SAs to make publicly available the administrative review results. At the same time, the SA is responsible for the administrative review and thus ensuring that information is made easily accessible to all members of the public. This final rule continues to require that SAs publicly post a summary of the administrative review results. In addition, the final rule allows SAs the discretion to strongly encourage that SFAs post a summary of the results for each SFA and make the report available to the public upon request. This additional SA flexibility is consistent with the statutory intent to promote transparency and public access to the administrative review results. A summary of the results, must be posted not later than 30 days after the SA provides the final results of the review to the SFA.

Accordingly, 7 CFR 210.18(m) of this final rule retains the requirement that SAs post the results but includes an option for the SA to strongly encourage an SFA to post a summary of the review results and make the administrative review report available to the public upon request.

#### Administrative Review Forms and Tools

Proposed Rule: The review forms and tools were not included in the proposed rule to update the administrative review process.

Public Comments: Twenty-four commenters addressed the administrative review forms and tools. Most commenters discussed perceived duplication in the administrative review forms and suggested reexamining the risk indicator tools and worksheets to make them more effective and less burdensome.

FNS Response: The forms and tools associated with the updated administrative review process will be addressed separately in a 60-day notice published in the Federal Register that aligns the forms and the tools with the administrative review rulemaking. The feedback provided by commenters regarding duplication in the forms, assessing the sensitivity of the risk tools associated with the process, and streamlining tools and forms for ease of use will assist FNS in developing the separate 60-day notice.

#### Fiscal Action

Proposed Rule: Under the proposed rule at 7 CFR 210.18(l), State agencies would continue to be required to take fiscal action for all PS-1 violations and for specific PS-2 violations. The proposed rule expands the scope of fiscal action for certification/benefit issuance PS-1 violations, revises the method to calculate fiscal action for applicable violations, and

modifies the State agency's authority to limit fiscal action for specific critical area violations when corrective action is completed.

Public Comments: Twenty-three commenters addressed fiscal action in several areas of the administrative review.

Commenters expressed concern over the expansion of fiscal action to the SFA for certification and benefit issuance errors. Some suggested this expansion should not occur and that fiscal action for benefit and certification errors should remain site based. Others suggested that a threshold for fiscal action, based on the size of the SFA, be established. Other commenters questioned the use of an error factor to determine the fiscal action amount.

Commenters suggested when to apply fiscal action during the administrative review. Suggestions included: applying fiscal action for repeat violations of the general areas where there is purposeful intent to circumvent the regulations; not applying fiscal action if the violations identified have resulted because staff members are new, have misinterpreted the rules or other involuntary errors; and applying fiscal action for specific meal pattern errors.

FNS Response: The consistent application of fiscal action plays a key role in maintaining the integrity of the NSLP and SBP. The proposed rule sought to expand the scope of the certification and benefit issuance review from the reviewed sites to the SFA level. In order to provide the SAs with a more accurate picture of the SFA's practices at all of its schools and improve program integrity, the proposed rule expands the scope of the certification and benefit issuance review from the reviewed sites to the SFA level. This change is also in step with the fact that most certification and benefit issuance is reviewed at the SFA/LEA level rather than at individual schools and that, therefore, most SFAs have a centralized recordkeeping system.

Through the use of an “error factor” for extrapolating fiscal action to the SFA using a percentage based calculation, the calculation takes into account the size of an SFA. SFAs with fewer financial resources may feel a greater impact from fiscal action, but that would be based on the availability of resources rather than SFA size. SAs have the option to review a statistically valid sample of the free and reduced-price students on the point-of-service benefit issuance documents for all schools in the SFA, or they can choose to review 100 percent of the free and reduced-price students on the point-of-service benefit issuance documents for all schools in the SFA s and not use the “factor” approach. This final rule also clarifies that while there is no fiscal action required for general area violations, the SA has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas of review.

Accordingly, this final rule at 7 CFR 210.18(l), expands the scope of fiscal action for certification/benefit issuance PS-1 violations, revises the method to calculate fiscal action for applicable violations and clarifies language regarding fiscal action in the general areas of review.

#### Timelines for Completing the Administrative Review

Proposed Rule: The SA must complete the administrative review during the school year in which the review was begun.

Public Comments: Nineteen commenters addressed the timelines for the administrative review process. Most commenters stressed that requiring the completion of administrative reviews in the same school year in which it was begun is difficult to achieve given the timeframes for off-site review, on-site review, and the correspondence that occurs between issuing the report, accepting corrective action plans, and implementing corrective actions.

FNS Response: FNS also recognizes the concerns expressed over the timeline for completing the administrative review. We expect that new efficiencies in the updated administrative review process will facilitate monitoring. However, to address the commenters' concerns, language will be modified to specify that, at a minimum, the on-site portion of the administrative review be completed prior to the conclusion of the school year in which the administrative review is scheduled to occur.

Accordingly, 7 CFR 210.18(c) of this final rule includes additional language to clarify the timeline for completing the administrative review.

#### Resource Management General Area

Proposed Rule: Off-site review activity is especially important for the Resource Management area of review which, as proposed at 7 CFR 210.18(h)(1), would require an off-site evaluation of information to determine if a comprehensive review is necessary. If risk indicators show that a comprehensive review is necessary, SAs must complete the comprehensive review using procedures specified in the Administrative Review Manual.

Public Comments: Eighteen commenters addressed the Resource Management portion of the administrative review. Most commenters stated that this area of the administrative review should be treated like Performance Standard 1(PS-1) and Performance Standard 2 (PS-2) in regards to fiscal action. Others encouraged USDA to consider allowing additional flexibility regarding the off-site requirement for SAs to complete this section. Several commenters offered suggestions for improvement including expanding the areas covered under Resource Management, offering additional guidance and training, and modifying the administrative review forms and risk indicators.

FNS Response: Resource Management is considered a general area of review and as such, fiscal action is not required. However, SAs may choose to withhold funds for repeated or egregious violations that are not corrected. FNS will update the language in the FNS Administrative Review Manual to include that SAs may also recover general funds on behalf of the non-profit school food service account as deemed necessary. FNS disagrees with the comments seeking additional flexibility in the off-site portion of the administrative review. Requiring an off-site review of Resource Management is necessary to allow the reviewer to fully prepare for the review, including consulting SA subject matter experts with specialized knowledge of Resource Management who do not typically participate in on-site reviews. Except for the Resource Management area, SAs have the option to utilize or not utilize the off-site review approach.

At this time, FNS is not expanding the areas required for review in the Resource Management section of the administrative review. However, the language has been modified to reflect that the Resource Management section includes, but is not limited to, the areas identified in the text and that the procedures outlined in the FNS Administrative Review Manual should be followed. FNS is continuing to provide training and guidance related to the Resource Management portion of the administrative review. Additionally, as noted later in this section, FNS is incorporating SA feedback regarding forms and tools as they are finalized.

Accordingly, the final rule requires an off-site review component for the Resource Management area and includes additional language to clarify the areas under review in the Resource Management section at 7 CFR 210.18(h)(1).

#### Scope of the Administrative Review

Proposed Rule: The SA must monitor compliance with critical and general areas of the administrative review in the NSLP, SBP and other school meal programs, as applicable.

Public Comments: Six commenters addressed the scope of the administrative review. Commenters had split opinions regarding the inclusion of other school meals programs, some recommended this requirement be reevaluated.

FNS Response: The periodic review of all school meals programs is critical to ensure they are properly administered and contribute to improved access, nutrition, and integrity in the Federal child nutrition efforts. The FNS Administrative Review Manual provides a review methodology that focuses on key aspects of each meal program without being overly burdensome.

Accordingly, 7 CFR 210.18(f) of this final rule requires the SAs to monitor other school meals programs during the administrative review.

#### SFA On-site Monitoring

Proposed Rule: The SFA is required to annually monitor the operation of the NSLP and SBP at each school under its jurisdiction. As is currently done with the NSLP, this monitoring of the SBP would include the counting and claiming system used by a school and the general areas of review that are readily observable.

Public Comments: Five commenters addressed the proposed SFA's annual on-site monitoring activities. Commenters supported adding readily visible general areas of review listed under 7 CFR 210.18(h) to the SFA's on-site review under 7 CFR 210.8(a). Regarding the SFA's on-site review of the SBP at 7 CFR 220.11(d), commenters suggested that a sample, rather than 100 percent of schools operating the SBP, should be monitored by the SFA annually.

FNS Response: This final rule expands the SFA's on-site monitoring activities as proposed to 7 CFR 210.8(a). However, FNS acknowledges that monitoring every SBP site annually may be a time and resource intensive process for SFAs. Accordingly, 7 CFR 220.11(d) of this final rule includes additional language to clarify that the SFA must annually monitor the SBP at a minimum of 50 percent of the schools operating the program under its jurisdiction, with each school operating the SBP to be monitored at least once every two years. Additionally, this final rule expands the SFA's on-site monitoring activities as proposed to 7 CFR 210.8(a).

#### On-site Meal Observation

Proposed Rule: To assess compliance with PS-2, the SA must observe a significant number of program meals at each serving line and at the point of service for each serving line on the day of review.

Public Comments: A number of commenters asked FNS to define what is meant by "significant number" of meals in regards to on-site observation of the meal service.

FNS Response: Although this final rule does not specify the number of meals that must be observed, it requires that program meals be observed as specified in the FNS Administrative Review Manual. Therefore, the SA must observe program meals at the beginning, middle and end of the meal service line, as well as at the point of service. Expectations for the observation of the meal service are further described in the FNS Administrative Review Manual.

Accordingly, 7 CFR 210.18(g)(2)(i)(B) of this final rule retains the requirement to observe a significant number of program meals on-site.

#### Miscellaneous Comments

Some commenters had the impression that a number of terms in the regulatory text were being used interchangeably-- including “components” for lunch and “items” for breakfast, and “lunch” and “meal(s).” The terms “component” for lunch and “items” for breakfast are not interchangeable terms. The terms are specific to the NSLP and SBP, respectively, and reflect the requirements of each meal pattern. The term “lunch” is being replaced with the term “meal(s),” where applicable, to indicate that both lunches and breakfasts must be monitored in the administrative review.

In addition, a number of comments requested the inclusion of SAs in the process for finalizing the tools and forms associated with the administrative review. FNS recognizes the valuable knowledge that SAs have gained through the voluntary implementation of the updated administrative review process. FNS has incorporated SA feedback on the process, tools, and forms annually and will continue to seek SA input.

Lastly, the regulatory citation associated with the Indirect Cost language added to 7 CFR 210.18, has been updated to reflect the implementation of 2 CFR 200.

### **III. Overview of the Key Changes to the Administrative Review**

The updated administrative review under 7 CFR 210.18, incorporates new and key procedures from the CRE and SMI reviews. It streamlines existing review procedures, gives SAs new review flexibilities, simplifies fiscal action, and includes updated review forms and new tools. This final rule replaces the existing CRE and SMI monitoring processes, and is expected to improve program integrity by providing a single, comprehensive, effective, and efficient SA monitoring process. Specific procedures for conducting the review process are described in the FNS Administrative Review Manual.

The key procedures carrying forward from previous CRE and SMI reviews include timing of reviews, scheduling of SFAs, exit conference and notification, corrective action, withholding payment, SFA appeal of SA findings, and FNS review activity. These provisions are found in the amendatory language and may include minor, non-substantive technical changes in 7 CFR 210.18 that are not discussed in this preamble. The preamble focuses on new key changes, which are discussed next.

## **Procedures for Conducting a Review**

### Minimum Number of Schools

The administrative review process under 7 CFR 210.18 requires SAs to review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In addition the SA must review a minimum number of schools. The final rule clarifies that the SA must review at least one school from each LEA. To be consistent with statutory language the final rule makes clear the requirement that the SA must select schools for review in each LEA using criteria established by the Secretary.

Details regarding the minimum number of schools to be reviewed and procedures for ensuring that a school in each LEA is reviewed, can be found in the School Year 2016-2017 FNS Administrative Review Manual.

Accordingly, the update that the SA must review at least one school from each LEA is outlined in 7 CFR 210.18 (e) (1) of the final rule.

### Off-site and on-site review activities

The administrative review process under 7 CFR 210.18, is a comprehensive on-site evaluation of SFAs participating in the school meal programs. This final rule establishes that some administrative review activities can be conducted off-site, rather than during the on-site portion of the review. Adding the off-site approach is expected to assist the SA by reducing the SA's travel time and expense, enabling SAs to conduct the documentation review and other existing review requirements over a longer period of time than would be possible while on-site. This also allows the reviewer to seek input from specialized State staff for adequate review of complex documentation (e.g., financial staff).

Off-site review activity is especially important for the Resource Management area of review which, as stated at 7 CFR 210.18(h)(1), requires an off-site evaluation of information to determine if a comprehensive review is necessary. For other areas of review, the off-site review is strongly recommended but it is not required. Examples of possible off-site review activities include:

- Identifying the sites for review.
- Reviewing documentation such as the SFA agreement, policy statement, renewal application, prior review findings and corrective action plans.
- Obtaining and reviewing the benefit issuance document.
- Selecting student certifications for review.
- Examining the SFA's verification procedures.
- Reviewing the SFA's counting and claiming procedures and documentation.
- Reviewing menus, production records, and related documents.
- Reviewing the Offer versus Serve policy.

- Identifying the school most at risk for nutrition related violations and conducting a targeted menu review in that school.
- Determining the targeted menu review approach.

The on-site review activities focus on validating the information obtained during the SFA off-site review and those aspects of program operations that can best be reviewed on-site. These types of on-site review activities are discussed in more detail under the heading “**Areas of Review.**”

Accordingly, 7 CFR 210.18(a) and 7 CFR 210.18(b) of the final rule add off-site activity to the administrative review process, and 7 CFR 210.18(h)(1) requires an off-site review for the Resource Management area of review.

#### Entrance and exit conferences

While some of the review activities can be conducted off-site, an observation of program operations while on-site at the SFA remains a critical component of program oversight. Prior to commencing on-site review activities, States are encouraged to convene an entrance conference with key SFA staff and, as applicable, LEA staff and administrators with responsibility for ensuring that program requirements are followed. This initial conversation can help clarify expectations for the on-site review, raise preliminary issues identified during off-site review activities, and identify the additional information needed to complete the on-site portion of the review. While not required, this rule provides, at 7 CFR 210.18(i)(1), the option for SAs to begin the administrative review by conducting an entrance conference with the relevant SFA staff. This provision reflects existing practice. This rule also retains the existing requirement for the SA to conduct an exit conference and codifies the requirement at 7 CFR 210.18(i)(2).

### Administrative review materials

This rule requires, in 7 CFR 210.18(f)(1), that SAs use the forms and tools prescribed by FNS to conduct the administrative review. As stated earlier, FNS will issue the updated tools and forms to align with the implementing rule. The tools and forms include, but are not limited to: an Off-site Assessment Tool, an On-site Assessment Tool, a Meal Compliance Risk Assessment Tool, a Dietary Specifications Assessment Tool, and a Resource Management Risk Indicator Tool.

These tools and corresponding instructions are currently available to SAs on the FNS PartnerWeb, which is a restricted access online portal for SAs that administer the school meal programs. SAs can find the tools under the subject “Administrative Review” located in the Resources and Guidance document library of the CND Policy and Memoranda Community. With the exception of the Resource Management Risk Indicator Tool, which must be completed off-site, the required administrative review tools may be completed off-site or on-site.

### **Areas of Review**

The updated administrative review process includes critical and general areas that mirror the critical and general areas specified in existing 7 CFR 210.18(g) and (h), with the modifications discussed below.

#### Critical Areas of Review

This final rule retains the critical areas of review that help evaluate compliance with several program requirements. The review of PS-1 focuses on certification for free and reduced price meals, benefit issuance, and meal counting and claiming. The review of PS-2 focuses on meals

meeting the meal pattern and dietary specification requirements and documentation to support meeting these requirements. The final rule retains both performance standards in 7 CFR 210.18(g)(1) and (g)(2) but modifies how they are monitored, as described in the next two subsections of this preamble.

#### PS-1 – Meal Access and Reimbursement

This final rule retains PS-1 in 7 CFR 210.18(g)(1) with only minor technical changes. Existing PS-1 refers to “All, free, reduced price and paid lunches...served only to children eligible for free, reduced price and paid lunches...” This rule replaces the term “lunches” with the term “meals” to include an assessment of both the NSLP and the SBP, and Afterschool Snacks as applicable, as required by the amendments made to the NSLA by section 207 of the HHFKA.

In addition, this rule retains the three-pronged scope of review in PS-1. The SA must:

- Determine the number of children eligible for free, reduced price and paid meals, by type, in the reviewed schools (hereafter termed “Certification”).
- Evaluate the system for issuing benefits and updating eligible status by validating the mechanisms the reviewed school uses to provide benefits to eligible children (hereafter termed “Benefit Issuance”).
- Determine whether the meal counting system yields correct claims (hereafter termed “Meal Counting and Claiming”).

Although the above processes remain in place, this rule streamlines and consolidates the Certification and Benefit Issuance review processes to improve program integrity and simplify monitoring. As provided in 7 CFR 210.18(g)(1)(i) of this final rule, the SA must:

- Obtain the free and reduced price benefit issuance document for each school under the jurisdiction of the SFA for the day of review or a day in the review period.
- Review all, or a statistically valid sample of, free and reduced price certification documentation (i.e., direct certifications, household applications) and other documentation related to eligibility status (e.g., verification, transfers).
- Validate that reviewed students' free and reduced price eligibility status was correctly determined and properly transferred to the benefit issuance document.

In addition, the final rule expands the scope of Certification and Benefit Issuance review from the reviewed sites to the SFA level in order to provide the SA with a more accurate picture of the SFA's practices at all schools. This rule requires the SA to review the free and reduced price certification and benefit issuance documentation for students across the entire SFA. This change reflects that most SFAs have a centralized recordkeeping system; generally, certifications are made and benefit issuance is maintained at the SFA level. This approach allows certification and benefit issuance errors identified during a review to be corrected at the SFA level.

Under 7 CFR 210.18(g)(1)(i) of this final rule, SAs will continue to have the option of reviewing either all certifications on the benefit issuance documents, or a statistically valid sample of certifications. SAs using a statistically valid sample review fewer student documents and the review yields results representative of the certification and benefit issuance activity in the SFA. The statistically valid sample size may be determined manually, or by using the Statistical Sample Generator developed by FNS or other statistical sampling software. Both options are described in the FNS Administrative Review Manual. This final rule retains the statistical sampling confidence level of 95 percent for electronic certification and benefit issuance systems.

For manual benefit issuance systems, this rule increases the sampling confidence level to 99 percent.

The Meal Counting and Claiming portion of the review continues to ensure that all free, reduced price and paid meals are accurately counted, recorded, consolidated and reported through a system that consistently yields correct claims. Under 7 CFR 210.18(g)(1)(ii) of the final rule, the SA continues to monitor counting and claiming at both the SFA and reviewed school levels. The review strategies remain unchanged; therefore, the SA must determine whether:

- Daily meal counts, by type, for the review period are more than the product of the number of children determined to be eligible, by type for the review period, adjusted for attendance at the reviewed schools;
- Each type of food service line provides accurate point of service meal counts, by type, and those meal counts are correctly counted and recorded at the reviewed schools; and
- All meals at the reviewed schools are correctly counted, recorded, consolidated and reported for the day they are served.

In addition, SAs must determine whether meal counts submitted by each school are correctly consolidated, recorded, and reported by the SFA on the Claim for Reimbursement.

Accordingly, the final rule combines the certification and benefit issuance process, expands the scope of the certification and benefits issuance review to the SFA level, and establishes acceptable sample sizes and confidence levels for statistical sampling at 7 CFR 210.18(g)(1)(i). The rule retains existing meal counting and claiming review procedures at 7 CFR 210.18(g)(1)(ii).

## PS-2 – Meal Pattern and Nutritional Quality

Section 210.18(g)(2)(i) of this final rule requires the SA to monitor an SFA's compliance with the meal patterns at each reviewed school, and 7 CFR210.18(g)(2)(ii) requires the SA to assess compliance with the dietary specifications using a risk-assessment approach. Although the final rule largely retains the existing scope of the PS-2 review, it makes the following changes:

- Requires the completion a USDA-approved menu tool for each school selected for review to establish the SFA's compliance with the required food components and quantities for each age/grade group being served. The menu tool can be completed off-site (preferably) or on-site using production records, menus, recipes, food receipts, and any other documentation that shows the meals offered during a week from the review period contained the required components/quantities.
- Requires the SAs to review menu and production records for a minimum of three to a maximum of seven operating days to determine whether all food components and quantities have been offered over the course of a typical school week.
- Requires the SAs to confirm, through on-site observation of reviewed schools, that students select at least three food components at lunch and at least three food items at breakfast when Offer versus Serve is in place, and that these meals include at least ½ cup of fruits or vegetables.
- Requires the SAs to assess compliance with the dietary specifications (calories, sodium, saturated fat, and trans fat) using a risk-based approach, and only requires a weighted nutrient analysis for a school determined to be at high risk for violations (see discussion under the heading Dietary Assessment).

Other PS-2 review procedures remain the same. For example, for the day of review, the SA must observe the serving line(s) to determine whether all required food components/items and food quantities are offered, and observe a significant number of program meals, as described in the FNS Administrative Review Manual, counted at the point of service for each type of serving line to determine whether the meals selected by the students contain the required food components and quantities. The SA must also assess whether performance-based cash assistance should continue to be provided for lunches served.

### Dietary Assessment

This final rule, at 7 CFR 210.10 and 7 CFR 220.8, continues to require the SAs to assess whether the meals offered to children are consistent with the calories, sodium, saturated fat, and trans fat restrictions. Unlike the existing requirements, the final rule requires that the SA follow a risk-based approach to identify the reviewed school most at risk of nutrition-related violations and conduct a targeted menu review of only that school. This differs from the previous requirement that SAs conduct a weighted nutrient analysis of the meals offered in all reviewed schools to determine whether those meals meet the calorie, sodium, and saturated fat requirements.

The final rule requires the SA to complete the Meal Compliance Risk Assessment Tool off-site or on-site for each school selected for review to identify the school most at risk for nutrition-related violations. This risk-based approach is intended to lessen the review burden on SAs and allow them to better target their resources. For the one school determined to be most at risk, the SA conducts an in-depth, targeted menu review using one of four FNS approved options. These options are: conduct a nutrient analysis, validate an existing nutrient analysis performed by the

SFA or a contractor, complete the Dietary Specifications Assessment Tool to further examine the food service practices, or follow an alternative FNS-approved process utilizing the Menu Planning Tools for Certification for Six Cent Reimbursement.

Accordingly, the updated review procedures to assess the food components and quantities are established in 7 CFR 210.18(g)(2)(i), and the procedures to assess the dietary specifications are established in 7 CFR 210.18(g)(2)(ii) of the final rule.

#### Performance-Based Cash Assistance

This provision is addressed in 7 CFR 210.18(g)(2)(iii) of the final rule. The SA must assess whether performance-based cash assistance should continue to be provided for the lunches served.

#### Follow-up Reviews

This final rule lessens the burden associated with the administrative review by removing the requirement for follow-up reviews triggered by a specific threshold. The follow-up review requirement was implemented at a time when a 5-year review cycle was in place and there was concern about the long span between reviews. Because the 3-year review cycle now allows the SA to have more frequent contact with the SFAs, the follow up requirement is unnecessary. Instead, the final review process emphasizes collaborative compliance. When errors are detected, the SA will require corrective action, provide technical assistance to bring the SFA into compliance, and take fiscal action when appropriate. The SA has discretion to do a follow-up review based on its own criteria.

Accordingly, this final rule removes the definitions of “follow-up reviews” and “review threshold” in existing 7 CFR 210.18(b) and removes the follow-up review procedures in 7 CFR 210.18(i). Minor references to follow-up review and review threshold throughout 7 CFR part 210 are also removed. The definitions of “large school food authority” and “small school food authority” are removed from 7 CFR 210.18(b), as these definitions were used in the determination of which SFAs received a follow-up review. The same definition of “large school food authority” is added to 7 CFR part 235, State Administrative Expense Funds, where it remains relevant for the State Administrative Expense allocation process.

#### General Areas of Review

The final rule expands the general areas of review to include existing and new requirements grouped into two broad categories: Resource Management and General Program Compliance.

Resource Management is a new general area of the administrative review, established in 7 CFR 210.18(h)(1), that assesses compliance with existing requirements that safeguard the overall financial health of the nonprofit school food service. The SA must use the Resource Management Risk Indicator Tool to identify if the SFA is at high risk for Resource Management violations, and only then conduct a comprehensive Resource Management review as described in the FNS Administrative Review Manual. The comprehensive review must include, but is not limited to the following:

- Maintenance of the Nonprofit School Food Service Account – 7 CFR 210.2, 210.14, 210.19(a) and 210.21;
- Paid Lunch Equity – 7 CFR 210.14(e);
- Revenue from Nonprogram Foods – 7 CFR 210.14(f); and

- Indirect Costs – 2 CFR part 200 and 7 CFR 210.14(g).

Adding Resource Management to the administrative review establishes a framework for this review area, promotes review consistency among all States, and strengthens stewardship of Federal funds. Requiring an off-site review of Resource Management allows the reviewer to use the expertise of off-site SA staff with specialized knowledge of Resource Management that may not typically be present during an on-site review. Under 7 CFR 210.18(h)(1) of the final rule provides SAs some flexibility in the review of Resource Management, provided the minimum areas of review are covered.

It is also important to note that this final rule adds a new paragraph (g) to the Resource Management requirements in 7 CFR 210.14 to clarify the SFA’s existing responsibilities with regard to indirect costs. This is discussed later in the preamble under the heading, “**IV. Changes to SFA Requirements.**”

7 CFR 210.18(h)(2), General Program Compliance, of the final rule focuses on the SFA compliance with the existing general areas: free and reduced price process, civil rights, SFA on-site monitoring, reporting and recordkeeping, and food safety. The final rule expands the general areas to include the requirements established by HHFKA for competitive food standards, water, outreach for the SBP and Summer Food Service Program (SFSP), professional standards, and local school wellness. The final rule moves the existing oversight of outreach for SBP and SFSP from 7 CFR 210.19(g) to the general areas of review under 7 CFR 210.18(h)(2).

In total, the general areas of review must include, but are not limited to, the following:

- Free and Reduced Price Process - including verification, notification, and other procedures – 7 CFR part 245.

- Civil Rights – 7 CFR 210.23(b).
- SFA On-site Monitoring – 7 CFR 210.8(a) and 220.11(d).
- Reporting and Recordkeeping – 7 CFR parts 210, 220 and 245.
- Food Safety – 7 CFR 210.13.
- Competitive Food Services – 7 CFR 210.11 and 7 CFR 220.12.
- Water – 7 CFR 210.10(a)(1)(i) and 7 CFR 220.8(a)(1).
- Professional Standards – 7 CFR 210.30.
- SBP and SFSP Outreach – 7 CFR 210.12(d).
- Local School Wellness Policies.

LEAs have been required to have local school wellness policies in place since 2006.

Assessing compliance with this requirement has been a general area of review under the CRE, and is included in the Administrative Review Manual. The Department has issued a separate rulemaking, Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 79 FR 10693 (2/26/14), to solicit public comment on the proposed implementation of section 204 of the HHFKA. The administrative review guidance will be updated to reflect finalized requirements.

Finally, as noted later in the preamble, this final rule expands the existing requirement for SFAs to conduct on-site monitoring. This change to 7 CFR 210.8, is discussed in more detail later under the heading “**IV. Changes to SFA Requirements.**”

#### Other Federal Program Reviews

The review of other Federal programs is a new aspect of the unified accountability system for school meals. It ensures that SAs monitor the NSLP’s Afterschool Snacks and SSO, the SMP,

and the FFVP when these programs are administered by the SFA under review. The SA must review selected critical areas established in 7 CFR 210.18(g), as applicable, when conducting administrative reviews of the NSLP's Afterschool Snacks and SSO, and of the SMP. In addition, the SA must review selected general areas established in 7 CFR 210.18(h), as applicable, when conducting administrative reviews of the NSLP's Afterschool Snacks and SSO, the FFVP, and the SMP. The FNS Administrative Review Manual specifies how the SA must assess the applicable critical and general areas when reviewing these other school meal programs.

Previously, a SA was only required to monitor the certification, count and milk/meal service procedures for the SMP (7 CFR part 215) or the NSLP Afterschool Snacks (7 CFR part 210) during a follow-up review if the SA had not evaluated these programs previously in the schools selected for an administrative review. This final rule includes other school meal programs in the regular, periodic review of SFA operations because it is critical that they are properly administered in order to improve program integrity overall.

Other Federal Program Reviews helps ensure that the SFA operates the other school meal programs in accordance with key regulatory requirements. In most cases, the review of other school meal programs includes the following:

To review NSLP Afterschool Snacks, the SA must:

- Use the Supplemental Afterschool Snacks Administrative Review Form.
- Review the school's eligibility for Afterschool Snacks.
- Ensure the school complies with counting and claiming procedures.
  - Confirm the SFA conducts self-monitoring activities twice per year as required in 7 CFR 210.9(c)(7).
- Assess compliance with the snack meal pattern in 7 CFR 210.10(o).

- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

To review the NSLP SSO, the SA must, at a minimum:

- Use the Supplemental Seamless Summer Option Administrative Review Form.
- Verify the site eligibility for the SSO.
- Ensure the SFA monitors the site(s) at least once per year.
- Review meal counting and claiming procedures.
- Monitor compliance with the meal patterns for meals in 7 CFR 210.10 and 7 CFR 220.8.
- Confirm the SFA informs families of the availability of free meals.
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

To review the SMP (in NSLP schools), the SA must, at a minimum:

- Use the Supplemental Special Milk Program Administrative Review Form.
- Review the milk pricing policy, counting and claiming, and milk service procedures.
- Observe the milk service at the reviewed site if there are issues with the meal counting and claiming procedures in the NSLP or SBP.
- Ensure accuracy in certification and benefit issuance, when observing milk service.
- Monitor compliance reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 215.

To review the FFVP, the SA must at a minimum:

- Confirm availability of benefits to all enrolled children free of charge.
- Monitor allowable program costs, service time, outreach efforts, and types of fruits and vegetables offered.

- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

The Department has issued separate rulemaking, Fresh Fruit and Vegetable Program, 77 FR 10981 (2/24/2012) to solicit public comment on the proposed implementation of the FFVP. Currently, the program is operated under guidance that follows general requirements for program operations under 7 CFR 210. When the FFVP final rule is published, the implementing administrative review regulations will reflect any necessary changes.

### **Fiscal Action**

SAs must identify the SFA's correct entitlement and take fiscal action when any SFA claims or receives more Federal funds than earned. This final rule continues to require SAs to take fiscal action for all PS-1 violations and for specific PS-2 violations, as discussed next. While no fiscal action is required for general area violations, the SA has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas. This final rule also expands the scope of fiscal action for certification/benefit issuance PS-1 violations, revises the method to calculate fiscal action for applicable violations, and modifies the SA's authority to limit fiscal action for specific critical area violations when corrective action is completed.

Details about the changes to fiscal action follow.

#### **PS-1 Violations**

SAs are required to take fiscal action for all certification, benefit issuance, meal counting, and claiming violations of PS-1. For the Certification and Benefit Issuance portion of the updated administrative review, 7 CFR 210.18(g) of this final rule requires the SAs to review certifications/benefit issuance for all the schools under the SFA's jurisdiction, not just the

reviewed schools. This broader scope of review is expected to provide the SA with a more accurate picture of the SFA's practices at all participating schools under its jurisdiction and lead to improved program integrity.

Given the broader scope of the Certification and Benefit Issuance review at the SFA level, this rule makes several changes to the related fiscal action. Section 210.18(l)(l) of this final rule applies fiscal action for certification and benefit issuance errors to the entire SFA, including non-reviewed schools. Expanding fiscal action across the entire SFA differs from the existing CRE review, and from the interim administrative review approach used by a number of SA operating under a waiver using the updated Administrative Review Manual. Under CRE and the interim administrative review approach, fiscal action was generally limited to the reviewed schools.

For certification and benefit issuance errors cited under paragraph (g)(1)(i) of this section, the total number of free and reduced price meals claimed must be adjusted according to procedures established by FNS.

This method to calculate fiscal action at the SFA level differs from the CRE approach, which based fiscal action on the number of incorrect certifications in reviewed schools and the corresponding number of serving days. This approach streamlines the determination of fiscal action and ensures program integrity SFA-wide. To reflect the expanded scope of review, the final rule also amends language in 7 CFR 210.19(c) to indicate that fiscal action applies to "meals" (rather than just lunches) and the SMP at 7 CFR part 215.

#### PS-2 Violations – Missing Food Component and Production Records

Under 7 CFR 210.18(l)(2)(i) of the final rule, SAs must continue to take fiscal action for PS-2 missing food component violations. Although fiscal action would generally be applied to the

reviewed school (as previously done), if a centralized menu is in place, the SA should evaluate the cause(s) of the violation to determine if it is appropriate to apply fiscal action SFA-wide.

In addition, the final rule requires the SA to assess fiscal action on meals claimed for reimbursement that are not supported by appropriate documentation. An SFA must document that it offers reimbursable meals and maintain documentation that demonstrates how meals offered to students meet meal pattern requirements. If production records are missing, or missing for a certain time period, the final rule requires the SA to take fiscal action unless the SFA is able to demonstrate to the satisfaction of the SA, that reimbursable meals were offered and served.

#### Duration of Fiscal Action For PS-1 Violations and PS-2 Violations Related to Missing Food Component and Production Records

Section 210.18(l)(3) of this final rule continues to require that SAs extend fiscal action back to the beginning of the school year or that point in time during the current school year when the infraction first occurred. Depending on the severity and longevity of the violation, the SA may extend fiscal action back to the beginning of the year or back to previous school years. However, this rule also provides some flexibility for SA to limit the duration of fiscal action when corrective action takes place for PS-1 violations and for PS-2 violations that are related to food components and missing production records. The flexibility is as follows:

As stated in 7 CFR 210.18(l)(3)(i), for PS-1 certification and benefit issuance errors, fiscal action is required for the review period and the month of the on-site review, at a minimum. For example, if the review period is January and the month of the on-site review is February, then at a minimum fiscal action would be applied to the months of January and February. In scenarios

where a month falls in between, i.e., January is the review period and March is when the on-site review occurs, then fiscal action is applied to all three months.

As stated in 7 CFR 210.18(l)(3)(ii), for other PS-1 violations and for PS-2 violations relating to missing food components and missing production records:

- If corrective action occurs during the on-site review month, the SA must apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month and for the review period. For example, if the review period is in January and the on-site review occurs in March and during the course of the review errors are identified and corrected on March 15, then fiscal action must be applied from March 1 through March 14 and for the entire review period, i.e., January.
- If corrective action occurs during the review period, the SA must apply fiscal action from the point corrective action occurs back through the beginning of the review period. For example, if the review period is January and the on-site review occurs in March and it is determined that the problem was corrected on January 15, then fiscal action would be applied from January 1 through January 14h.
- If corrective action occurs prior to the review period, no fiscal action is required. In this scenario, any error identified and corrected prior to the review period, i.e., before January, it is not subject to fiscal action.
- If corrective action occurs in a claim month(s) between the review period and the on-site review month, the SA must apply fiscal action only to the review period. For example, if the review period is January and the on-site review occurs in March and the corrective action takes place in February, the SA must apply fiscal action only to the review period, i.e., January.

For PS-2 Violations Related to Vegetable Subgroups, Milk Type, Food Quantities, Whole Grain-Rich Foods, and Dietary Specifications

Section 210.18(l)(2) of this final rule continues to require fiscal action for repeated PS-2 violations related to vegetable subgroups and milk type. For repeated PS-2 violations related to food quantities, whole grain-rich foods and the dietary specifications, fiscal action remains discretionary. The final rule specifies the scope and duration of fiscal action for these repeated PS-2 violations in 7 CFR 210.18(l)(2)(ii) through (l)(2)(v).

For purposes of administrative reviews, repeated violations are generally those identified during the administrative review of an SFA in one cycle and then identified again in the administrative review of the same SFA in the next review cycle. For example, if the SA finds a PS-2 violation (e.g., unallowable milk type) in an SFA in the first review cycle (SY 2013-2016), and finds the same problem during the second review cycle (SY 2016-2019), fiscal action would be required during the second review cycle.

It is important to note that while fiscal action is generally limited to the repeated violation found in a subsequent administrative review cycle, SAs are required by 7 CFR 210.19(c) to take fiscal action for recurrent violations found in later visits to the SFA during the initial cycle (e.g., technical assistance visits, follow-up reviews) if these violations reflect willful or egregious disregard of program requirements. This would not occur during SY 2013-2014 through SY 2015-2016, as FNS has indicated in the memorandum Administrative Reviews and Certification for Performance-Based Reimbursement in School Year (SY) 2014-2015 (SP -54 2014), and subsequent Question and Answer guidance documents, that repeat findings will not result in

fiscal action if they are repeated in the first 3-year review cycle. Beginning in SY 2016-2017, SAs should contact FNS for guidance in these situations.

For repeated violations involving vegetable subgroups or milk requirements, the final rule continues to require the SA to take fiscal action provided that technical assistance has been provided by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains in non-compliance with PS-2. The final rule at 7 CFR 210.18(l)(2)(ii) specifies how a State must apply fiscal action. Under the final rule, all meals offered with an unallowable milk type or with no milk variety will be disallowed for reimbursement. If one vegetable subgroup is not offered over the course of the week reviewed, the SA should evaluate the cause(s) of the error to determine the appropriate fiscal action required. When calculating the required fiscal action, the SA has discretion, as appropriate based on the cause and extent of the error, to disallow all meals served in the deficient week.

For repeated violations of quantities or the whole grain-rich foods and dietary specifications, the final rule continues to provide the SAs discretion to apply fiscal action provided that technical assistance has been given by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains in noncompliance with quantity, whole grain rich and dietary specifications. Section 210.18(l)(2)(iii) of the final rule specifies how fiscal action may be applied.

For repeated violations involving food quantities or the whole grain-rich foods requirement, the SA has discretion to apply fiscal action. When evaluating the cause(s) of the error to determine the extent of the discretionary fiscal action, the reviewer must consider the following:

- If meals contain insufficient quantities of required food components, the affected meals may be disallowed/reclaimed.

- If no whole grain-rich foods are offered over the course of the week reviewed, all meals served in the deficient week may be disallowed/reclaimed.
- If insufficient whole grain-rich foods are offered, meals for one or more days during the week under review may be disallowed/reclaimed. The SA has discretion to select which day's meals may be disallowed/reclaimed. Additional meals may be disallowed/reclaimed at the SA's discretion.
- If a vegetable subgroup is offered in an insufficient quantity to meet the minimum weekly requirement, meals may be disallowed/reclaimed for one day that week. The SA has discretion to select which day's meals are disallowed/reclaimed. If the amount of fruit juice offered exceeds weekly limitations, or the amount of vegetable juice exceeds weekly limitations meals for the entire week may be disallowed/reclaimed.

For repeated violations of the dietary specifications, 7 CFR 210.18(l)(2)(iv) of the final rule specifies that the SA has discretion to take fiscal action and disallow/reclaim all meals for the entire week, if applicable, provided that technical assistance has been given by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains noncompliant with the dietary specifications. If fiscal action is applied, it is limited to the school selected for the targeted menu review. A nutrient analysis using USDA-approved software is required to justify any fiscal action for noncompliance with the dietary specifications requirements.

The intent of these fiscal action modifications and clarifications is to promote program integrity. Clearly identifying the critical area violations that may result in fiscal action and the scope and duration of any fiscal action, will promote consistency in fiscal action procedures among SAs.

## **Transparency Requirement**

Section 207 of the HHFKA amended section 22 of the NSLA (42 U.S.C. 1769c) to require SAs to report the final results of the administrative review to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule at 7 CFR 210.18(m) requires the SA to post a summary of the most recent final administrative review results for each SFA on the SA's publicly available website and provides the SA the option to strongly encourage each SFA to post a summary on the SFA's public website. The review summary must cover access and reimbursement (including eligibility and certification review results), an SFA's compliance with the meal patterns and the nutritional quality of school meals, the results of the review of the school nutrition environment (including food safety, local school wellness policy, and competitive foods), compliance related to civil rights, and general program participation. At a minimum, this would include the written notification of review findings provided to the SFAs Superintendent as required at 7 CFR 210.18.(i)(3). FNS will provide additional guidance on the appropriate format.

SAs must post this review summary no later than 30 days after the SA provides the final results of the administrative review to the SFA. The SA must also make a copy of the final administrative review report available to the public upon request.

In response to concerns expressed by commenters, this final rule provides SAs the discretion to strongly encourage that SFAs post a summary of the final results, or otherwise make them available to the public, and also to make a copy of the final administrative review report available to the public upon request. This option is consistent with the goal to promote transparency and accountability in program operations. It also reflects the fact that parents and

stakeholders are increasingly aware of the potential benefits of the school meals programs and would like more information from the SFA.

## **Reporting and Recordkeeping**

This final rule addresses, at 7 CFR 210.18(n) and (o), the SA's reporting and recordkeeping requirements associated with the updated administrative review process. It continues to require that SAs file the form FNS-640 but removes the reference to follow-up reviews. The final rule retains the basic record keeping requirements previously found at 210.18(p) but removes the recordkeeping requirement associated with follow-up reviews, which are no longer required. The reporting requirements associated with follow-up reviews in the previous 7 CFR 210.18(n) and 7 CFR 210.20(b)(7) is also eliminated.

The removal of the follow-up review is expected to streamline the administrative review process for SAs. As discussed earlier, the information collection associated with the updated forms and new tools required for the administrative review process will be addressed separately in a 60-day notice.

## **IV. Changes to SFA Requirements**

### **Resource Management**

As stated earlier, this final rule adds a new paragraph (g) in 7 CFR 210.14, Resource Management, to clarify SFA responsibilities regarding indirect costs that will be monitored by the SA during the administrative review. The additional regulatory language does not represent a new requirement for SFAs. The paragraph (g) reflects existing requirements in 2 CFR 200 that are applicable to the operators of the school meal programs. The intent of paragraph (g) is to

highlight an SFA responsibility that often goes unnoticed because it is not clearly stated in 7 CFR 210.14.

## **Monitoring**

To improve overall monitoring of the school meal programs, this final rule also expands the SFA on-site monitoring process. SFAs with more than one school are required to perform no less than one on-site review of the meal counting and claiming system employed by each school under its jurisdiction. The SFA must conduct the required on-site review prior to February 1 of each school year. The final rule at 7 CFR 210.8(a)(1) expands the scope of on-site monitoring to include the readily observable general areas of review cited under 7 CFR 210.18(h), as identified by FNS. Readily observable areas of review could include, but are not limited to, the availability of free potable water, proper food safety practices, and compliance with Civil Rights requirements.

In addition, the final rule extends the SFA's monitoring activities to the SBP. As stated in 7 CFR 220.11(d), the SFA must annually monitor the operation of the SBP at a minimum of 50 percent of the schools operating SBP under its jurisdiction, with each school operating the SBP to be monitored at least once every two years. As is currently done with the NSLP, this monitoring of the SBP would include the counting and claiming system used by a school and the general areas of review that are readily observable. This expansion of the SFA monitoring activities is intended to ensure that SFAs self-monitor and are aware of operational issues, and that schools receive ongoing guidance and technical assistance to facilitate compliance with program requirements.

## **V. Comparison of Administrative Review Requirements**

The following chart summarizes the key existing, proposed, and final administrative review requirements and states the anticipated outcomes.

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
<p><b>Review location –</b> SAs are required to conduct an on-site review of each SFA once every 3 years.</p>	<p><b>Review location –</b></p> <ul style="list-style-type: none"> <li>• The proposal would allow portions of the review to be conducted off-site and on-site.</li> <li>• No change to the 3-year cycle.</li> </ul>	<p><b>Review Location –</b></p> <ul style="list-style-type: none"> <li>• The final rule allows portions of the review to be conducted off-site and on-site.</li> <li>• No change to the 3-year cycle.</li> </ul>	<p>The change is expected to provide SAs with review flexibility, lower travel costs, and increase their ability to use in-house/off-site staff expertise to review complex documentation.</p>
<p><b>Scope of review –</b> The scope of review covers both critical and general areas for the NSLP and SBP. The critical areas, PS-1 and PS-2, assess whether meals claimed for reimbursement are served to children eligible for free, reduced price, and paid meals; are counted, recorded and consolidated, and reported through a system that consistently yields correct claims; and meet meal pattern requirements.</p> <p>The general areas assess whether the SFA met other</p>	<p><b>Scope of review –</b></p> <ul style="list-style-type: none"> <li>• The proposal retains the focus on critical and general areas of review, but would expand the general areas of review for a more robust monitoring process.</li> <li>• New general areas would include: Resource Management, Competitive Food Services, Water and SBP and SFSP Outreach.</li> <li>• In addition, the proposal would add Other Federal Program reviews and would introduce risk assessment protocols to target at risk schools/districts.</li> </ul>	<p><b>Scope of review –</b></p> <ul style="list-style-type: none"> <li>• The final rule retains the focus on critical and general areas of review, but expands the general areas of review.</li> <li>• New general areas include: Resource Management, Competitive Food Services, Water, SBP and SFSP Outreach, Professional Standards, and Local School Wellness Policies.</li> <li>• In addition, the final rule adds Other Federal Program reviews and introduces risk assessment protocols to target at risk schools/districts.</li> </ul>	<p>The final rule establishes the unified review system envisioned by the HHFKA. While the final rule expands the scope of review by adding new general areas and Other Federal Program reviews, it also provides efficiencies resulting from off-site monitoring, risk assessment protocols, and automated forms. Overall, the change is expected to reduce the review burden on SAs and increase program integrity.</p>

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
program requirements related to free and reduced price process, civil rights, SFA monitoring, food safety, and reporting and recordkeeping.			
<b>Minimum Number of Schools to Review</b> – SAs must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event must the SA review less than the minimum number of schools.	<b>Minimum Number of Schools to Review</b> <ul style="list-style-type: none"> <li>The proposed rule retained that the SA must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more.</li> <li>In no event must the SA review less than the minimum number of schools.</li> </ul>	<b>Minimum Number of Schools to Review</b> <ul style="list-style-type: none"> <li>The final rule retains that State agency must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more.</li> <li>In no event must the State agency review less than the minimum number of schools.</li> <li>The final rule adds that the SA must review at least one school from each LEA.</li> </ul>	The final rule makes clear the statutory requirement that the SA must select schools for review in each LEA using criteria established by the Secretary.
<b>Eligibility certification</b> – SAs review the free and reduced price certifications for children in schools selected for review.	<b>Eligibility certification</b> <ul style="list-style-type: none"> <li>The proposal would require SAs to review the free and reduced price certifications made by the local educational agency in all schools in the district or a statistically valid sample of those certifications.</li> </ul>	<b>Eligibility certification</b> <ul style="list-style-type: none"> <li>The final rule requires SAs to review all free and reduced price certifications made by the local educational agency in all schools in the district or a statistically valid sample of those</li> </ul>	The change is expected to improve program integrity across the SFA. No change in burden is expected since the SA has the option to review a statistically valid sample of applications.

Existing Requirement	Proposed Rule	Final Rule	Effect of Change
		certifications.	
<b>Fiscal action –</b> Fiscal action for certification and benefit issuance violations is calculated based on errors in the reviewed schools.	<b>Fiscal action –</b> <ul style="list-style-type: none"> <li>Fiscal action for certification and benefit issuance violations would apply to the entire SFA, including non-reviewed schools and would be determined in a manner prescribed by FNS.</li> <li>The proposal would also prescribe the extent of fiscal action for repeated PS-2 violations.</li> <li>If corrective action takes place, the duration of fiscal action for PS-1 and specific PS-2 violations could also be revised.</li> </ul>	<b>Fiscal action –</b> <ul style="list-style-type: none"> <li>The final rule requires that fiscal action for certification and benefit issuance violations apply to the entire SFA, including non-reviewed schools and is to be determined in a manner prescribed by FNS.</li> <li>The final rule also prescribes the extent of fiscal action for PS-1 violations and repeated PS-2 violations.</li> <li>If corrective action takes place, the SA may limit the duration of fiscal action for PS-1 and specific PS-2 violations.</li> </ul>	The change is expected to promote consistency and accuracy in fiscal action procedures used by SAs nationwide.

Existing Requirement	Proposed Rule	Final Rule	Effect of Change
<p><b>Meal pattern and dietary specifications</b> – SAs must review the meal service for the day of review and menu and production records for a minimum period of 5 days. SAs must conduct a weighted nutrient analysis for each reviewed school.</p>	<p><b>Meal pattern and dietary specifications</b></p> <ul style="list-style-type: none"> <li>• The SAs would continue to review the meal service for the day of review, and menus and production records for 3-7 days. If the review reveals problems with components or quantities, the SA would expand the review to, at a minimum, the entire review period.</li> <li>• The proposed rule would require the SAs to conduct a meal compliance risk assessment for all schools under review to identify the school at highest risk for nutrition-related violations, and to conduct a targeted menu review for that single school.</li> <li>• If the targeted menu review confirms the school is at high risk for dietary specification violations, a weighted nutrient analysis for that school would be required.</li> </ul>	<p><b>Meal pattern and dietary specifications</b></p> <ul style="list-style-type: none"> <li>• The SAs continue to review the meal service for the day of review, and menus and production records for 3-7 days. If the review reveals problems with components or quantities, the SA expands the review to, at a minimum, the entire review period.</li> <li>• This final rule requires the SAs to: (1) conduct a meal compliance risk assessment for all schools under review to identify the school at highest risk for nutrition-related violations; (2) to conduct a targeted menu review for that single school using one of four options.</li> <li>• If the targeted menu review confirms the school is at high risk for dietary specification violations, a weighted nutrient analysis for that school is required.</li> </ul>	<p>Requiring a weighted nutrient analysis only for a school determined to be at highest risk for dietary specification violations makes the best use of limited SA resources. This change is expected to improve program integrity by focusing time and effort on at risk schools.</p>

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
<b>Follow-up reviews</b> – SAs are required to determine whether an SFA has violations in excess of specified thresholds and, if so, conduct follow-up reviews within specified timeframes.	<b>Follow-up reviews</b> <ul style="list-style-type: none"> <li>• The proposal would eliminate the required follow-up reviews and corresponding review thresholds.</li> <li>• Follow-up reviews would be at the SA’s discretion.</li> </ul>	<b>Follow-up reviews</b> <ul style="list-style-type: none"> <li>• The final rule eliminates the required follow-up reviews and corresponding review thresholds.</li> <li>• Follow-up reviews are at the SA’s discretion</li> </ul>	The change recognizes that SAs will be conducting reviews on a more frequent basis. It provides States with the flexibility to conduct follow-up review activity at their discretion.
<b>Reporting and recordkeeping</b> – SAs are required to notify FNS of the names of large SFAs in need of a follow-up review. SAs are required to maintain records regarding its criteria for selecting schools for follow-up reviews.	<b>Reporting and recordkeeping</b> <ul style="list-style-type: none"> <li>• The proposal would eliminate the follow-up review reporting and recordkeeping requirements.</li> </ul>	<b>Reporting and recordkeeping</b> <ul style="list-style-type: none"> <li>• The final rule eliminates the follow-up review reporting and recordkeeping requirements.</li> </ul>	The change reduces reporting burden for SAs.
<b>Posting of final review results</b> – No existing requirements.	<b>Posting of final review results</b> <ul style="list-style-type: none"> <li>• The proposal would require SAs to make the final results of each SFA administrative review available to the public in an accessible, easily understood manner in accordance with guidelines established by the Secretary; such results must also be posted and</li> </ul>	<b>Posting of final review results</b> <ul style="list-style-type: none"> <li>• The final rule requires SAs to make the final results of administrative reviews available to the public in an accessible, easily understood manner in accordance with guidelines established by the Secretary; such results must also be posted and otherwise made available to the</li> </ul>	Posting this information online is expected to enhance awareness of school and SFA performance at meeting the requirements of the school meal programs and increase informed involvement of parents in the program. The increased reporting burden associated

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
	otherwise made available to the public on request.	public on request. <ul style="list-style-type: none"> <li>SAs have the discretion to require SFAs to post the results.</li> </ul>	with the posting is expected to be minor.
<b>Include other Federal school nutrition programs in a follow up review</b> – If the SA did not evaluate the certification, count and milk/meal service procedures for the SMP or afterschool care programs in the schools selected for an administrative review, it must do so during the follow-up review.	<b>Include other Federal school nutrition programs in the administrative review</b> <ul style="list-style-type: none"> <li>The proposal would require SAs to review NSLP afterschool snacks and SSO, the SMP, and the FFVP as part of the administrative review under 7 CFR 210.18.</li> </ul>	<b>Include other Federal school nutrition programs in the administrative review</b> <ul style="list-style-type: none"> <li>The final rule requires SAs to review t NSLP afterschool snacks and SSO, the SMP, and the FFVP as part of the administrative review under 7 CFR 210.18.</li> </ul>	The change fosters integrity of all school meal programs, and promotes efficiency.

### Comparison SFA Requirements

The following chart summarizes SFA requirements associated with the administrative review process.

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
<b>Resource Management</b> –7 CFR 210.8 does not address indirect costs explicitly.	<b>Resource Management</b> <ul style="list-style-type: none"> <li>This proposal would add text in 7 CFR 210.14 to clarify the SFA’s existing</li> </ul>	<b>Resource Management</b> <ul style="list-style-type: none"> <li>This final rule adds text in 7 CFR 210.14 to clarify the SFA’s existing responsibilities</li> </ul>	The change increases understanding of indirect cost responsibilities that are monitored by the SA under the

<b>Existing Requirement</b>	<b>Proposed Rule</b>	<b>Final Rule</b>	<b>Effect of Change</b>
	responsibilities with regard to indirect costs.	with regard to indirect costs	proposed administrative review.
<b>SFA monitoring</b> – SFAs are required to monitor the lunch counting and claiming processes schools annually.	<b>SFA monitoring</b> <ul style="list-style-type: none"> <li>• The proposal would require the SFA to also monitor the SBP; and</li> <li>• to expand the annual school review by including selected general areas of review that are readily observable.</li> </ul>	<b>SFA monitoring</b> <ul style="list-style-type: none"> <li>• The final rule requires the SFA to also monitor the SBP in 50 percent of schools operating the SBP annually, with all schools being monitored at least once every two years; and</li> <li>• to expand the annual school review by including selected general areas of review that are readily observable.</li> </ul>	The change results in a more robust and effective SFA monitoring process, which contributes to the integrity of the school meal programs.

## **VI. Miscellaneous Changes**

This final rule makes a number of miscellaneous changes to conform with other changes in the school meals programs:

- Deletes obsolete provision at 7 CFR 210.7(d)(1)(vi) related to validation reviews of performance-based reimbursement;
- Revises 7 CFR 210.9(b)(18) through 210.9(b)(20) and 210.15(b)(4) to reflect the diversity of certification mechanisms beyond household applications;
- Revises 7 CFR 210.19(a)(1) to reflect the Paid Lunch Equity requirements;

- Revises 7 CFR 210.19(a)(5) to update the review frequency to 3 years conforming with the requirement at 210.18(c); and
- Deletes obsolete provisions at 7 CFR 210.20(b)(7) and 210.23(d).

## **VII. Procedural Matters**

### **A. Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866 and has been determined to be Not Significant.

### **B. Regulatory Impact Analysis**

This final rule has been designated by the Office of Management and Budget (OMB) to be Not Significant; therefore a Regulatory Impact Analysis is not required.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review it has been certified

that this final rule would not have a significant impact on a substantial number of small entities. This final rule updates the administrative review process that State agencies must follow to monitor compliance with school meal programs' requirements. The administrative review process provides State agencies more flexibility, tools and streamlined procedures. FNS does not expect that the final rule will have a significant economic impact on small entities.

#### **D. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

## **E. Executive Order 12372**

The nutrition assistance programs and areas affected by this final rule are listed in the Catalog of Federal Domestic Assistance as follows:

- National School Lunch Program, No. 10.555
- School Breakfast Program, No. 10.553
- Special Milk Program, No. 10.556
- State Administrative Expenses for Child Nutrition, No. 10.560
- Fresh Fruit and Vegetable Program, No. 10.582

For the reasons set forth in 2 CFR chapters IV, the nutrition assistance programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. The structure of the Child Nutrition Programs allows State and local agencies to provide feedback that contributes to the development of meaningful and feasible program requirements. This final rule has taken into account the extensive experience of State agencies conducting the administrative reviews which would be updated by this rule.

## **F. Executive Order 13132**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations

describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation with State Officials.

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. In addition, prior to drafting this final rule, FNS assembled a 26-member team consisting of staff from FNS Headquarters and the seven Regional Offices, and State Agency staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas. The School Meal Administrative Review Reinvention Team (SMARRT) worked together for a year to address issues and develop an updated review process that is responsive to the needs, wants, and challenges of the State agencies.

2. Nature of Concerns and the Need to Issue This Rule.

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to require that:

- a. The administrative review process be a unified accountability system; and
- b. When any SFA is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule updates the administrative review process established in 7 CFR 210.18 to carry out these two statutory requirements. In addition, the final rule would also make a number of changes to address issues and concerns raised by State agencies. Issues identified by State agencies include simplifying the administrative review and fiscal action. State agencies

also want the administrative reviews to be meaningful and contribute to better meal service. They also want a review process that would allow them to better utilize the limited resources they have.

3. Extent to Which the Department Meets Those Concerns.

FNS has considered the concerns identified by SMARRT. The administrative review process in this final rule streamlines review procedures to allow more time for technical assistance, emphasizes risk-assessment to enable the State agency to focus the administrative review on school food authorities at high risk for noncompliance, and provides State agencies flexibility to conduct portions of the review off-site to make better use of limited resources.

**G. Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, appeal procedures as redesignated by this rule in 7 CFR 210.18(p) and 7 CFR 235.11(f) of this chapter must be exhausted.

**H. Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or

actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. In spring 2011, FNS offered five opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. FNS followed up with conference calls on February 13, 2013; May 22, 2013; August 21, 2013 and November 6, 2013. These consultation sessions provide the opportunity to address Tribal concerns related to the School Meals Programs. Additionally, FNS has provided ongoing updates regarding the progress of the administrative review process. To date, Indian Tribal governments have not expressed concerns about the required unified accountability system during these consultations.

USDA is unaware of any current Tribal laws that could be in conflict with the final rule. The Department will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule.

## **I. Civil Rights Impact Analysis**

FNS has reviewed this final rule in accordance with Department Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule’s intent and provisions revealed that this final rule is not intended to reduce a child’s ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program.

## **J. Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection included in this final rule, which were filed under 0584-0006, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, FNS will publish a notice in the Federal Register of the action.

## **K. E-Government Act Compliance**

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

## **List of Subjects**

### **7 CFR Parts 210**

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

### **7 CFR Parts 215**

Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements.

### **7 CFR Parts 220**

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

## **7 CFR Parts 235**

Administrative practice and procedure; Food assistance programs; Grant programs-education; Grant programs-health; Infants and children; Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220, and 235 are amended as follows:

### **PART 210 – NATIONAL SCHOOL LUNCH PROGRAM**

1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C.1751-1760, 1779.

2. In part 210, remove the word “SF-269” wherever it appears and add in its place the word “FNS-777”.

#### **§ 210.7 [Amended]**

3. In § 210.7, remove paragraph (d)(1)(vii) and redesignate paragraph (d)(1)(viii) as paragraph (d)(1)(vii).

#### **§ 210.8 [Amended]**

4. In § 210.8:

a. In paragraph (a) introductory text, remove the words “lunch” and “lunches” wherever they appear and add in their place the words “meal” and “meals” respectively.

b. In paragraph (a)(1):

i. In the first sentence, remove the word “lunch”;

ii. In the first sentence, remove the words “employed by” and add in their place the words “and the readily observable general areas of review cited under § 210.18(h), as prescribed by FNS for”;

iii. In the third sentence, add the words “or general review areas” after the word “procedures”; and

iv. In the fourth sentence, remove the word “lunches” and add in its place the word “meals”; and

c. In paragraph (a)(3)(ii), remove the word “subsequent”.

5. In § 210.9:

a. In paragraph (b)(18), remove the words “applications which must be readily retrievable by school” and add in their place the words “certification documentation”;

b. Revise paragraph (b)(19) introductory text; and

c. Revise paragraph (b)(20).

The revisions read as follows:

**§ 210.9 Agreement with State agency.**

\* \* \* \* \*

(b) \* \* \*

(19) Maintain direct certification documentation obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, indicating that:

\* \* \* \* \*

(20) Retain eligibility documentation submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

\* \* \* \* \*

6. In § 210.10:

- a. In paragraph (h), revise the subject heading;
- b. In paragraph (h)(1), revise the first sentence;
- c. Revise paragraph (i) subject heading and paragraph (i)(1);
- d. Revise paragraph (i)(3)(i);
- e. In paragraph (j), revise the paragraph heading; and
- f. Add paragraph (o)(5).

The revisions and addition read as follows:

**§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.**

\* \* \* \* \*

(h) Monitoring dietary specifications. (1) \* \* \* When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, and sodium of the lunches offered to students in grades K and above during one week of the review period. \* \* \*

\* \* \* \* \*

(i) Nutrient analyses of school meals—(1) Conducting the nutrient analysis. Any nutrient analysis, whether conducted by the State agency under § 210.18 or by the school food authority, must be performed in accordance with the procedures established in paragraph (i)(3) of this

section. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the meals offered to each age grade group over a school week. The weighted nutrient analysis must be performed as required by FNS guidance.

\* \* \* \* \*

(3) \* \* \*

(i) Weighted averages. The nutrient analysis must include all foods offered as part of the reimbursable meals during one week within the review period. Foods items are included based on the portion sizes and serving amounts. They are also weighted based on their proportionate contribution to the meals offered. This means that food items offered more frequently are weighted more heavily than those not offered as frequently. The weighted nutrient analysis must be performed as required by FNS guidance.

\* \* \* \* \*

(j) Responsibility for monitoring meal requirements. \* \* \*

\* \* \* \* \*

(o) \* \* \*

(5) Monitoring afterschool snacks. Compliance with the requirements of this paragraph is monitored by the State agency as part of the administrative review conducted under § 210.18. If the snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must provide technical assistance and require corrective action. In addition, the State agency must take fiscal action, as authorized in §§ 210.18(l) and 210.19(c).

\* \* \* \* \*

7. In § 210.14, add a sentence at the end of paragraph (d) and add paragraph (g) to read as follows:

**§ 210.14 Resource management.**

\* \* \* \* \*

(d) \* \* \* The school food authority’s policies, procedures, and records must account for the receipt, full value, proper storage and use of donated foods.

\* \* \* \* \*

(g) Indirect costs. School food authorities must follow fair and consistent methodologies to identify and allocate allowable indirect costs to the nonprofit school food service account, in accordance with 2 CFR part 200 as implemented by 2 CFR part 400.

**§ 210.15 [Amended]**

8. In § 210.15, in paragraph (b)(4), remove the words “applications for” and add in their place the words “certification documentation for”.

9. Revise § 210.18 to read as follows:

**§ 210.18 Administrative reviews.**

(a) Programs covered and methodology. Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities participating in the National School Lunch Program and the School Breakfast Program (part 220 of this chapter). These procedures must also be followed, as applicable, to conduct administrative reviews of the National School Lunch Program’s Afterschool Snacks and Seamless Summer Option, the Special Milk Program (part 215 of this chapter), and the Fresh Fruit and Vegetable Program. To conduct

a program review, the State agency must gather and assess information off-site and/or on-site, observe the school food service operation, and use a risk-based approach to evaluate compliance with specific program requirements.

(b) Definitions. The following definitions are provided in alphabetical order in order to clarify State agency administrative review requirements:

Administrative reviews means the comprehensive off-site and/or on-site evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. The term “administrative review” is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program, and includes other areas of program operations determined by the State agency to be important to program performance.

Critical areas means the following two performance standards described in detail in paragraph (g) of this section:

(i) Performance Standard 1 - All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.

(ii) Performance Standard 2 - Reimbursable lunches meet the meal requirements in § 210.10, as applicable to the age/grade group reviewed. Reimbursable breakfasts meet the meal requirements in § 220.8 of this chapter, as applicable to the age/grade group reviewed.

Day of Review means the day(s) on which the on-site review of the individual sites selected for review occurs.

Documented corrective action means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

General areas means the areas of review specified in paragraph (h) of this section. These areas include free and reduced price process, civil rights, school food authority on-site monitoring, reporting and recordkeeping, food safety, competitive food services, water, program outreach, resource management, and other areas identified by FNS.

Participation factor means the percentages of children approved by the school for free meals, reduced price meals, and paid meals, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid meals is derived by subtracting the number of children approved for free and reduced price meals for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled must be used. If school food authority participation factors are unavailable or unreliable, State-wide data must be employed.

Review period means the most recent month for which a Claim for Reimbursement was submitted, provided that it covers at least ten (10) operating days.

(c) Timing of reviews. State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool

Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 3-year review cycle, provided that each school food authority is reviewed at least once every 4 years. For each State agency, the first 3-year review cycle started the school year that began on July 1, 2013, and ended on June 30, 2014. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

(1) Review cycle exceptions. FNS may, on an individual school food authority basis, approve written requests for 1-year extensions to the 3-year review cycle specified in paragraph (c) of this section if FNS determines this 3-year cycle requirement conflicts with efficient State agency management of the programs.

(2) Follow-up reviews. The State agency may conduct follow-up reviews in school food authorities where significant or repeated critical or general violations exist. The State agency may conduct follow-up reviews in the same school year as the administrative review.

(d) Scheduling school food authorities. The State agency must use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies may take into consideration the findings of the claims review process required under § 210.8(b)(2) in the selection of school food authorities.

(1) Schedule of reviews. To ensure no unintended overlap occurs, the State agency must inform FNS of the anticipated schedule of school food authority reviews upon request.

(2) Exceptions. In any school year in which FNS or the Office of the Inspector General (OIG) conducts a review or investigation of a school food authority in accordance with § 210.19(a)(4), the State agency must, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency must document any exception authorized under this paragraph.

(e) Number of schools to review. At a minimum, the State agency must review the number of schools specified in paragraph (e)(1) of this section and must select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section. The State agency may review all schools meeting the school selection criteria specified in paragraph (e)(2) of this section.

(1) Minimum number of schools. State agencies must review at least one school from each local education agency. Except for residential child care institutions, the State agency must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event must the State agency review less than the minimum number of schools illustrated in Table A for the National School Lunch Program.

**Table A**

<b>Number of schools in the school food authority</b>	<b>Minimum number of schools to review</b>
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	12*

\* Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up (> 0.5) or down (< 0.5) to the nearest whole number.

(2) School selection criteria. (i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(1) of this section, must be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (e)(2)(i) of this section is not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the additional schools selected for review must be identified using State agency criteria which may include low participation schools; recommendations from a food service director based on findings from the on-site visits or the claims review process required under § 210.8(a); or any school in which the daily meal counts appear questionable (e.g., identical or very similar claiming patterns, or large changes in free meal counts).

(iii) In selecting schools for an administrative review of the School Breakfast Program, State agencies must follow the selection criteria set forth in this paragraph and FNS' Administrative Review Manual. At a minimum:

(A) In school food authorities operating only the breakfast program, State agencies must review the number of schools set forth in Table A in paragraph (e)(1) of this section.

(B) In school food authorities operating both the lunch and breakfast programs, State agencies must review the breakfast program in 50 percent of the schools selected for an administrative review under paragraph (e)(1) of this section that operate the breakfast program.

(C) If none of the schools selected for an administrative review under paragraph (e)(1) of this section operates the breakfast program, but the school food authority operates the program

elsewhere, the State agency must follow procedures in the FNS Administrative Review Manual to select at least one other site for a school breakfast review.

(3) Site selection for other federal program reviews—(i) National School Lunch Program’s Afterschool Snacks. If a school selected for an administrative review under this section operates Afterschool Snacks, the State agency must review snack documentation for compliance with program requirements, according to the FNS Administrative Review Manual. Otherwise, the State agency is not required to review the Afterschool Snacks.

(ii) National School Lunch Program’s Seamless Summer Option. The State agency must review Seamless Summer Option at a minimum of one site if the school food authority selected for review under this section operates the Seamless Summer Option. This review can take place at any site within the reviewed school food authority the summer before or after the school year in which the administrative review is scheduled. The State agency must review the Seamless Summer Option for compliance with program requirements, according to the FNS Administrative Review Manual.

(iii) Fresh Fruit and Vegetable Program. The State agency must review the Fresh Fruit and Vegetable Program at one or more of the schools selected for an administrative review, as specified in Table B. If none of the schools selected for the administrative review operates the Fresh Fruit and Vegetable Program but the school food authority operates the Program elsewhere, the State agency must follow procedures in the FNS Administrative Review Manual to select one or more sites for the program review.

**Table B**

<b>Number of Schools Selected for an NSLP Administrative Review That Operate the FFVP</b>	<b>Minimum Number of FFVP Schools to be Reviewed</b>
0 to 5	1

6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	12*

\* Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up ( $> 0.5$ ) or down ( $< 0.5$ ) to the nearest whole number.

(iv) Special Milk Program. If a school selected for review under this section operates the Special Milk Program, the State agency must review the school's program documentation off-site or on-site, as prescribed in the FNS Administrative Review Manual. On-site review is only required if the State agency has identified documentation problems or if the State agency has identified meal counting or claiming errors in the reviews conducted under the National School Lunch Program or School Breakfast Program.

(4) Pervasive problems. If the State agency review finds pervasive problems in a school food authority, FNS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraphs (e)(1) and (e)(3) of this section. Where FNS authorizes the State agency to cease review activity, FNS may either conduct the review activity itself or refer the school food authority to OIG.

(5) Noncompliance with meal pattern requirements. If the State agency determines there is significant noncompliance with the meal pattern and nutrition requirements set forth in § 210.10 and § 220.8 of this chapter, as applicable, the State agency must select the school food authority for administrative review earlier in the review cycle.

(f) Scope of review. During the course of an administrative review for the National School Lunch Program and the School Breakfast Program, the State agency must monitor compliance with the critical and general areas in paragraphs (g) and (h) of this section, respectively. State agencies may add additional review areas with FNS approval. Selected critical and general areas must be monitored when reviewing the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, the Special Milk Program, and the Fresh Fruit and Vegetable Program, as applicable and as specified in the FNS Administrative Review Manual.

(1) Review forms. State agencies must use the administrative review forms, tools and workbooks prescribed by FNS.

(2) Timeframes covered by the review. (i) The timeframes covered by the administrative review includes the review period and the day of review, as defined in paragraph (b) of this section.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period must be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) Audit findings. To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency must document the source and the date of the audit.

(g) Critical areas of review. The performance standards listed in this paragraph are directly linked to meal access and reimbursement, and to the meal pattern and nutritional quality of the reimbursable meals offered. These critical areas must be monitored by the State agency when

conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these critical areas must also be monitored, as applicable, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, and of the Special Milk Program.

(1) Performance Standard 1 (All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.) The State agency must follow review procedures stated in this section and as specified in the FNS Administrative Review Manual to ensure that the school food authority's certification and benefit issuance processes for school meals offered under the National School Lunch Program, and School Breakfast Program are conducted as required in part 245 of this chapter, as applicable. In addition, the State agency must ensure that benefit counting, consolidation, recording and claiming are conducted as required in this part and part 220 of this chapter for the National School Lunch Program and the School Breakfast Program, respectively. The State agency must also follow procedures consistent with this section, and as specified in the FNS Administrative Review Manual, to review applicable areas of Performance Standard 1 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) Certification and benefit issuance. The State agency must gather information and monitor the school food authority's compliance with program requirements regarding benefit application, direct certification, and categorical eligibility, as well as the transfer of benefits to the point-of-service benefit issuance document. To review this area, the State agency must obtain the benefit issuance document for each participating school under the jurisdiction of the school food

authority for the day of review or a day in the review period, review all or a statistically valid sample of student certifications, and validate that the eligibility certification for free and reduced price meals was properly transferred to the benefit issuance document and reflects changes due to verification findings, transfers, or a household's decision to decline benefits. If the State agency chooses to review a statistically valid sample of student certifications, the State agency must use a sample size with a 99 percent confidence level of accuracy. However, a sample size with a 95 percent confidence level of accuracy may be used if a school food authority uses an electronic benefit issuance and certification system with no manual data entry and the State agency has not identified any potential systemic noncompliance. Any sample size must be large enough so that there is a 99 or 95 percent, as applicable, chance that the actual accuracy rate for all certifications is not less than 2 percentage points less than the accuracy rate found in the sample (i.e., the lower bound of the one-sided 99/95 percent confidence interval is no more than 2 percentage points less than the point estimate).

(ii) Meal counting and claiming. The State agency must gather information and conduct an on-site visit to ensure that the processes used by the school food authority and reviewed school(s) to count, record, consolidate, and report the number of reimbursable meals/snacks served to eligible students by category (i.e., free, reduced price or paid meal) are in compliance with program requirements and yield correct claims. The State agency must determine whether:

(A) The daily meal counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid meals for the review period times an attendance factor. If the meal count, for any type, appears questionable or significantly exceeds the product of the number of

eligibles, for that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(B) For each school selected for review, each type of food service line provides accurate point of service meal counts, by type, and those meal counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with § 210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable meals, by type, and is correctly implemented as approved by the State agency.

(C) For each school selected for review, all meals are correctly counted, recorded, consolidated and reported for the day they are served.

(2) Performance Standard 2 (Lunches claimed for reimbursement by the school food authority meet the meal requirements in § 210.10, as applicable to the age/grade group reviewed.

Breakfasts claimed for reimbursement by the school food authority meet the meal requirements in § 220.8 of this chapter, as applicable to the age/grade group reviewed.) The State agency must follow review procedures, as stated in this section and detailed in the FNS Administrative Review Manual, to ensure that meals offered by the school food authority meet the food component and quantity requirements and the dietary specifications for each program, as applicable. Review of these critical areas may occur off-site or on-site. The State agency must also follow procedures consistent with this section, as specified in the FNS Administrative Review Manual, to review applicable areas of Performance Standard 2 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) Food components and quantities. For each school selected for review, the State agency must complete a USDA-approved menu tool, review documentation, and observe the meal service to

ensure that meals offered by the reviewed schools meet the meal patterns for each program. To review this area, the State agency must:

(A) Review menu and production records for the reviewed schools for a minimum of one school week (i.e., a minimum number of three consecutive school days and a maximum of seven consecutive school days) from the review period. Documentation, including food crediting documentation, such as food labels, product formulation statements, CN labels and bid documentation, must be reviewed to ensure compliance with the lunch and breakfast meal patterns. If the documentation review reveals problems with food components or quantities, the State agency must expand the review to, at a minimum, the entire review period. The State agency should consider a school food authority compliant with the school meal pattern if:

(1) When evaluating the daily and weekly range requirements for grains and meat/meat alternates, the documentation shows compliance with the daily and weekly minimums for these components, regardless of whether the school food authority has exceeded the recommended weekly maximums for the same components.

(2) When evaluating the service of frozen fruit, the State agency determines that the school food authority serves frozen fruit with or without added sugar.

(B) On the day of review, the State agency must:

(1) Observe a significant number of program meals, as described in the FNS Administrative Review Manual, at each serving line and review the corresponding documentation to determine whether all reimbursable meal service lines offer all of the required food components/items and quantities for the age/grade groups being served, as required under § 210.10, as applicable, and § 220.8 of this chapter, as applicable. Observe meals at the beginning, middle and end of the meal service line, and confirm that signage or other methods are used to assist students in

identifying the reimbursable meal. If the State agency identifies missing components or inadequate quantities prior to the beginning of the meal service, it must inform the school food authority and provide an opportunity to make corrections. Additionally, if visual observation suggests that quantities offered are insufficient or excessive, the State agency must require the reviewed schools to provide documentation demonstrating that the required amounts of each component were available for service for each day of the review period.

(2) Observe a significant number of the program meals counted at the point of service for each type of serving line to determine whether the meals selected by the students contain the food components and food quantities required for a reimbursable meal under § 210.10, as applicable, and § 220.8 of this chapter, as applicable.

(3) If Offer versus Serve is in place, observe whether students select at least three food components at lunch and at least three food items at breakfasts, and that the lunches and breakfasts include at least ½ cup of fruits or vegetables.

(ii) Dietary specifications. The State agency must conduct a meal compliance risk assessment for each school selected for review to determine which school is at highest risk for nutrition-related violations. The State agency must conduct a targeted menu review for the school at highest risk for noncompliance using one of the options specified in the FNS Administrative Review Manual. Under the targeted menu review options, the State agency may conduct or validate an SFA-conducted nutrient analysis for both lunch and breakfast, or further evaluate risk for noncompliance and, at a minimum, conduct a nutrient analysis if further examination shows the school is at high risk for noncompliance with the dietary specifications in § 210.10 and § 220.8 of this chapter. The State agency is not required to assess compliance with the dietary

specifications when reviewing meals for preschoolers, and the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option.

(iii) Performance-based cash assistance. If the school food authority is receiving performance-based cash assistance under § 210.7(d), the State agency must assess the school food authority's meal service and documentation of lunches served and determine its continued eligibility for the performance-based cash assistance.

(h) General areas of review. The general areas listed in this paragraph reflect requirements that must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these general areas must also be monitored, as applicable and as specified in the FNS Administrative Review Manual, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Fresh Fruit and Vegetable Program, and the Special Milk Program. The general areas of review must include, but are not limited to, the following:

(1) Resource management. The State agency must conduct an off-site assessment of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the school food authority is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review including, but not limited to, the following areas using procedures specified in the FNS Administrative Review Manual.

(i) Maintenance of the nonprofit school food service account. The State agency must confirm the school food authority's resource management is consistent with the maintenance of the nonprofit school food service account requirements in §§ 210.2, 210.14, 210.19(a), and 210.21.

(ii) Paid lunch equity. The State agency must review compliance with the requirements for pricing paid lunches in § 210.14(e).

(iii) Revenue from nonprogram foods. The State agency must ensure that all non-reimbursable foods sold by the school food service, including, but not limited to, a la carte food items, adult meals, and vended meals, generate at least the same proportion of school food authority revenues as they contribute to school food authority food costs, as required in § 210.14(f).

(iv) Indirect costs. The State agency must ensure that the school food authority follows fair and consistent methodologies to identify and allocate allowable indirect costs to school food service accounts, as required in 2 CFR part 200 and § 210.14(g).

(2) General Program Compliance—(i) Free and reduced price process. In the course of the review of each school food authority, the State agency must:

(A) Confirm the free and reduced price policy statement, as required in § 245.10 of this chapter, is implemented as approved.

(B) Ensure that the process used to verify children's eligibility for free and reduced price meals in a sample of household applications is consistent with the verification requirements, procedures, and deadlines established in § 245.6a of this chapter.

(C) Determine that, for each reviewed school, the meal count system does not overtly identify children eligible for free and reduced price meals, as required under § 245.8 of this chapter.

(D) Review at least 10 denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price meals, and whether denied households were provided notification in accordance with § 245.6(c)(7) of this chapter.

(E) Confirm that a second review of applications has been conducted and that information has been correctly reported to the State agency as required in § 245.11, if applicable.

(ii) Civil rights. The State agency must examine the school food authority's compliance with the civil rights provisions specified in § 210.23(b) to ensure that no child is denied benefits or otherwise discriminated against in any of the programs reviewed under this section because of race, color, national origin, age, sex, or disability.

(iii) School food authority on-site monitoring. The State agency must ensure that the school food authority conducts on-site reviews of each school under its jurisdiction, as required by §§ 210.8(a)(1) and 220.11(d) of this chapter, and monitors claims and readily observable general areas of review in accordance with §§ 210.8(a)(2) and (a)(3), and 220.11(d) of this chapter.

(iv) Competitive food standards. The State agency must ensure that the local educational agency and school food authority comply with the nutrition standards for competitive foods in §§ 210.11 and 220.12 of this chapter, and retain documentation demonstrating compliance with the competitive food service and standards.

(v) Water. The State agency must ensure that water is available and accessible to children at no charge as specified in §§ 210.10(a)(1)(i) and 220.8(a)(1) of this chapter.

(vi) Food safety. The State agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of § 210.13.

(vii) Reporting and recordkeeping. The State agency must determine that the school food authority submits reports and maintains records in accordance with program requirements in this part, and parts 220 and 245 of this chapter, and as specified in the FNS Administrative Review Manual.

(viii) Program outreach. The State agency must ensure the school food authority is conducting outreach activities to increase participation in the School Breakfast Program and the Summer Food Service Program, as required in § 210.12(d). If the State agency administering the Summer

Food Service Program is not the same State agency that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

(ix) Professional standards. The State agency shall ensure the local educational agency and school food authority complies with the professional standards for school nutrition program directors, managers, and personnel established in § 210.30.

(x) Local school wellness. The State agency shall ensure the local educational agency complies with the local school wellness requirements set forth in § 210.30.

(i) Entrance and exit conferences and notification—(1) Entrance conference. The State agency may hold an entrance conference with the appropriate school food authority staff at the beginning of the on-site administrative review to discuss the results of any off-site assessments, the scope of the on-site review, and the number of schools to be reviewed.

(2) Exit conference. The State agency must hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency must discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis.

(3) Notification. The State agency must provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school food authority) or authorized representative, preferably no later than 30 days after the exit conference for each review. The written notification must include the date(s) of review, date of the exit conference, review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for

Reimbursement or withholding payment in accordance with the provisions of this section, the State agency must provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, must be provided by certified mail, or its equivalent, or sent electronically by e-mail or facsimile. The notice must also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The State agency must notify the school food authority, in writing, of the appeal procedures as specified in §210.18(p) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.29(d)(3) of the regulations.

(j) Corrective action. Corrective action is required for any violation under either the critical or general areas of the review. Corrective action must be applied to all schools in the school food authority, as appropriate, to ensure that deficient practices and procedures are revised system-wide. Corrective actions may include training, technical assistance, recalculation of data to ensure the accuracy of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action must be taken in accordance with paragraph (l) of this section.

(1) Extensions of the timeframes. If the State agency determines that extraordinary circumstances make a school food authority unable to complete the required corrective action within the timeframes specified by the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) Documented corrective action. Documented corrective action is required for any degree of violation of general or critical areas identified in an administrative review. Documented

corrective action may be provided at the time of the review; however, it must be postmarked or submitted to the State agency electronically by e-mail or facsimile, no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (i)(2) of this section or as otherwise extended by the State agency under paragraph (j)(1) of this section. The State agency must maintain any documented corrective action on file for review by FNS.

(k) Withholding payment. At a minimum, the State agency must withhold all program payments to a school food authority as follows:

(1) Cause for withholding. (i) The State agency must withhold all Program payments to a school food authority if documented corrective action for critical area violations is not provided with the deadlines specified in paragraph (j)(2) of this section;

(ii) The State agency must withhold all Program payments to a school food authority if the State agency finds that corrective action for critical area violation was not completed;

(iii) The State agency may withhold Program payments to a school food authority at its discretion, if the State agency found a critical area violation on a previous review and the school food authority continues to have the same error for the same cause; and

(iv) For general area violations, the State agency may withhold Program payments to a school food authority at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (j)(2) of this section, corrective action is not complete, or corrective action was not taken as specified in the documented corrective action.

(2) Duration of withholding. In all cases, Program payments must be withheld until such time as corrective action is completed, documented corrective action is received and deemed acceptable by the State agency, or the State agency completes a follow-up review and confirms that the

problem has been corrected. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with § 210.25.

(3) Exceptions. The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (k)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

(4) Failure to withhold payments. FNS may suspend or withhold Program payments, in whole or in part, to those State agencies failing to withhold Program payments in accordance with paragraph (k)(1) of this section and may withhold administrative funds in accordance with § 235.11(b) of this chapter. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (k)(1) of this section to FNS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

(l) Fiscal action. The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review as specified in this section. Fiscal action must be taken in accordance with the principles in § 210.19(c) and the procedures established in the FNS Administrative Review Manual. The

State agency must follow the fiscal action formula prescribed by FNS to calculate the correct entitlement for a school food authority or a school. While there is no fiscal action required for general area violations, the State agency has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas as described in paragraph (k)(1)(iv).

(1) Performance Standard 1 violations. A State agency is required to take fiscal action for Performance Standard 1 violations, in accordance with this paragraph and paragraph (l)(3).

(i) For certification and benefit issuance errors cited under paragraph (g)(1)(i) of this section, the total number of free and reduced price meals claimed must be adjusted to according to procedures established by FNS.

(ii) For meal counting and claiming errors cited under paragraph (g)(1)(ii) of this section, the State agency must apply fiscal action to the incorrect meal counts at the school food authority level, or only to the reviewed schools where violations were identified, as applicable.

(2) Performance Standard 2 violations. Except as noted in paragraphs (l)(2)(iii) and (l)(2)(iv) of this section, a State agency is required to apply fiscal action for Performance Standard 2 violations as follows:

(i) For missing food components or missing production records cited under paragraph (g)(2) of this section, the State agency must apply fiscal action.

(ii) For repeated violations involving milk type and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency must apply fiscal action as follows:

(A) If an unallowable milk type is offered or there is no milk variety, any meals selected with the unallowable milk type or when there is no milk variety must also be disallowed/reclaimed; and

(B) If one vegetable subgroup is not offered over the course of the week reviewed, the reviewer should evaluate the cause(s) of the error to determine the appropriate fiscal action. All meals served in the deficient week may be disallowed/reclaimed.

(iii) For repeated violations involving food quantities and whole grain-rich foods cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed;

(B) If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed;

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed.

(D) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and

(E) If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed.

(iv) For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications cited under paragraph (g)(2)(ii) of this section, the State agency has discretion to apply fiscal action to the reviewed school as follows:

(A) If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed/ reclaimed; and

(B) Fiscal action is limited to the school selected for the targeted menu review and must be supported by a nutrient analysis of the meals at issue using USDA-approved software.

(v) The following conditions must be met prior to applying fiscal action as described in paragraphs (1)(2)(ii) through (iv) of this section:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains noncompliant with the meal requirements established in part 210 and part 220 of this chapter.

(3) Duration of fiscal action. Fiscal action must be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred for all violations of Performance Standard 1 and specific violations of Performance Standard 2. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years. If corrective action occurs, the State agency may limit the duration of fiscal action for Performance Standard 1 and Performance Standard 2 violations as follows:

(i) Performance Standard 1 certification and benefit issuance violations. The total number of free and reduced price meals claimed for the review period and the month of the on-site review must be adjusted to reflect the State calculated certification and benefit issuance adjustment factors.

(ii) Other Performance Standard 1 and Performance Standard 2 violations. With the exception of violations described in paragraph (1)(3)(i) of this section, a State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors.

(A) If corrective action occurs during the on-site review month or after, the State agency would be required to apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month, and for the review period;

(B) If corrective action occurs during the review period, the State agency would be required to apply fiscal action from the point corrective action occurs back through the beginning of the review period;

(C) If corrective action occurs prior to the review period, no fiscal action would be required; and

(D) If corrective action occurs in a claim month between the review period and the on-site review month, the State agency would apply fiscal action only to the review period.

(4) Performance-based cash assistance. In addition to fiscal action described in paragraphs

(1)(2)(i) through (v) of this section, school food authorities found to be out of compliance with the meal patterns or nutrition standards set forth in § 210.10 may not earn performance-based cash assistance authorized under § 210.4(b)(1) unless immediate corrective action occurs.

School food authorities will not be eligible for the performance-based reimbursement beginning the month immediately following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

(m) Transparency requirement. The most recent administrative review final results must be easily available to the public.

(1) The State agency must post a summary of the most recent results for each school food authority on the State agency's public website, and make a copy of the final administrative review report available to the public upon request. A State agency may also strongly encourage each school food authority to post a summary of the most recent results on its public website, and make a copy of the final administrative review report available to the public upon request.

(2) The summary must cover meal access and reimbursement, meal patterns and nutritional quality of school meals, school nutrition environment (including food safety, local school wellness policy, and competitive foods), civil rights, and program participation.

(3) The summary must be posted no later than 30 days after the State agency provides the results of administrative review to the school food authority.

(n) Reporting requirement. Each State agency must report to FNS the results of the administrative reviews by March 1 of each school year on a form designated by FNS. In such annual reports, the State agency must include the results of all administrative reviews conducted in the preceding school year.

(o) Recordkeeping. Each State agency must keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records must be retained as specified in § 210.23(c) and include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools for administrative reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i) of this section, if applicable.

(p) School food authority appeal of State agency findings. Except for FNS-conducted reviews authorized under § 210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative review activity conducted by the State agency under § 210.18. State agencies may use their own appeal

procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the

hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, or its equivalent, or sent electronically by e-mail or facsimile, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, or its equivalent, or electronically by e-mail or facsimile, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process; and

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(q) FNS review activity. The term "State agency" and all the provisions specified in paragraphs

(a) through (h) of this section refer to FNS when FNS conducts administrative reviews in accordance with § 210.29(d)(2). FNS will notify the State agency of the review findings and the

need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

10. In § 210.19:

a. In the seventh sentence of paragraph (a)(1), add the words “in a manner that is consistent with the paid lunch equity provision in § 210.14(e) and corresponding FNS guidance,” after the word “lunches,”;

b. Revise paragraph (a)(2);

c. In the fifth sentence of paragraph (a)(5), remove the words “an on-site” and the number “5” and add in their place the word “a” and the number “3”, respectively.

d. Remove the sixth sentence of paragraph (a)(5);

e. In the second sentence of paragraph (c) introductory text, remove the words “the meal” and add the phrase “, 215,” after the number “210”;

f. In the second sentence of paragraph (c)(1), add “, 215,” after “210”;

g. In the second sentence of paragraph (c)(2)(i), remove the word “lunches” and add in its place the word “meals” and remove the word “lunch” from the third sentence and add in its place the word “meal”;

h. Remove the fourth sentence of (c)(2)(i);

i. In the first sentence of paragraph (c)(2)(ii), remove the reference “§ 210.18(m)” and add in its place the reference “§ 210.18(l)” and in the last sentence of paragraph (c)(2)(ii), remove the word “lunches” and add in its place the word “meals”;

j. In paragraph (c)(2)(iii), remove the words “lunches” and “lunch” and add in their place the words “meals” and “meal”, respectively; and

m. Remove paragraph (g).

The revision reads as follows:

**§ 210.19 Additional responsibilities.**

(a) \* \* \*

(2) Improved management practices. The State agency must work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation, menu acceptance, or program efficiency. The State agency should provide training and technical assistance to the school food authority or direct the school food authority to places to obtain such resources, such as the Institute of Child Nutrition.

\* \* \* \* \*

**§ 210.20 [Amended]**

11. In § 210.20:

a. Remove paragraph (a)(5) and redesignate paragraphs (a)(6) through (10) as paragraphs (a)(5) through (9); and

b. Remove paragraph (b)(7) and redesignate paragraphs (b)(8) through (15) as paragraphs (b)(7) through (14).

**§ 210.23 [Amended]**

12. In § 210.23, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

**§ 210.29 [Amended]**

13. In § 210.29:

- a. In paragraph (b), remove the words “or § 210.18a” and “reviews and”;
- b. In paragraph (d)(1), remove the words “and/or any follow-up review” from the first sentence;  
and
- c. In paragraph (d)(2), remove the words “or follow-up reviews”.

**PART 215 – SPECIAL MILK PROGRAM FOR CHILDREN**

14. The authority citation for part 215 continues to read as follows:

**Authority:** 42 U.S.C.1772 and 1779.

**§ 215.11 [Amended]**

15. In § 215.11:

- a. In the second sentence of paragraph (b)(2), revise “§ 210.18(i)” to read  
“§ 210.18”; and
- b. Revise the third sentence of paragraph (b)(2) to read as follows:

**§ 215.11 Special responsibilities of State agencies.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Compliance reviews of participating schools shall focus on the reviewed school's  
compliance with the required certification, counting, claiming, and milk service procedures.\* \* \*

\* \* \* \* \*

16. Revise § 215.18 to read as follows:

**§ 215.18 Information collection/recordkeeping – OMB assigned control numbers.**

7 CFR section where requirements are described	Current OMB control number
215.3(d)	0584-0067
215.5(a)	0584-0005
215.7	0584-0005
215.10(a), (b), (d)	0584-0005
215.11(c)(1)	0584-0005
215.11(c)(2)	0584-0594
215.12(d)	0584-0005
215.13a	0584-0026
215.14a	0584-0005

**PART 220 – SCHOOL BREAKFAST PROGRAM**

17. The authority citation for part 220 continues to read as follows:

**Authority:** 42 U.S.C.1773, 1779, unless otherwise noted.

18. In § 220.8:

- a. In paragraph (h)(1), remove the phrase “Effective July 1, 2013 (SY 2013-2014), as part of the administrative review authorized under § 210.18 of this chapter, State agencies must conduct a weighted nutrient analysis for the school(s) selected for review” from the first sentence, and add in its place the phrase “When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis”; and
- b. Revise paragraphs (i) and (j).

The revisions read as follows:

**§ 220.8 Meal requirements for breakfasts.**

\* \* \* \* \*

(i) Nutrient analyses of school meals. Any nutrient analysis of school breakfasts conducted under the administrative review process set forth in § 210.18 of this chapter must be performed in accordance with the procedures established in § 210.10(i) of this chapter. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the breakfasts offered to each age grade group over a school week.

(j) Responsibility for monitoring meal requirements. Compliance with the applicable breakfast requirements in paragraph (b) of this section, including the dietary specifications for calories, saturated fat, sodium and trans fat, and paragraphs (o) and (p) of this section will be monitored by the State agency through administrative reviews authorized in § 210.18 of this chapter.

\* \* \* \* \*

19. In § 220.11, add paragraph (d) to read as follows:

**§ 220.11 Reimbursement procedures.**

\* \* \* \* \*

(d) The school food authority shall establish internal controls which ensure the accuracy of breakfast counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site review of the breakfast counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid breakfast counts against data which will assist

in the identification of breakfast counts in excess of the number of free, reduced price and paid breakfasts served each day to children eligible for such breakfasts; and a system for following up on those breakfast counts which suggest the likelihood of breakfast counting problems.

(1) On-site reviews. Every school year, each school food authority with more than one school shall perform no less than one on-site review of the breakfast counting and claiming system and the readily observable general areas of review identified under § 210.18(h) of this chapter, as specified by FNS, for a minimum of 50 percent of schools under its jurisdiction with every school within the jurisdiction being reviewed at least once every two years. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures or general review areas, the school food authority shall ensure that the school implements corrective action, and within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid breakfasts, respectively, served for each day of operation.

(2) School food authority claims review process. Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the breakfast count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid breakfasts served on any day of operation to children currently eligible for such breakfasts.

\* \* \* \* \*

20. In § 220.13:

- a. In the sixth sentence of paragraph (b)(2), remove “SF-269” and add in its place “FNS-777”;
- b. Revise paragraphs (f)(2) through (4);
- c. Revise paragraph (g); and
- d. Amend paragraph (j) by removing the words “supervisory assistance” and adding in their place the word “administrative” in the first sentence.

The revisions read as follows:

**§ 220.13 Special responsibilities of State agencies.**

\* \* \* \* \*

(f) \* \* \*

(2) State agencies must conduct administrative reviews of the school meal programs specified in § 210.18 of this chapter to ensure that schools participating in the designated programs comply with the provisions of this title. The reviews of selected schools must focus on compliance with the critical and general areas of review identified in § 210.18 for each program, as applicable, and must be conducted as specified in the FNS Administrative Review Manual for each program. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this chapter or by FNS under § 210.29(d)(2) of this chapter. Any such appeal shall be subject to the procedures set forth under § 210.18(p) of this chapter or § 210.29(d)(3) of this chapter, as appropriate.

(3) For the purposes of compliance with the meal requirements in §§ 220.8 and 220.23, the State agency must follow the provisions specified in § 210.18(g) of this chapter, as applicable.

(4) State agency assistance must include visits to participating schools selected for administrative reviews under § 210.18 of this chapter to ensure compliance with program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI, of the Civil Rights Act of 1964.

\* \* \* \* \*

(g) State agencies shall adequately safeguard all assets and monitor resource management as required under § 210.18 of this chapter, and in conformance with the procedures specified in the FNS Administrative Review Manual, to assure that assets are used solely for authorized purposes.

\* \* \* \* \*

#### **§ 220.14 [Amended]**

21. In paragraph (h), add the words “food authority” after the word “school” and remove the words “§ 220.8(g), § 220.8(i)(2) and (i)(3), whichever is applicable” and add in their place the words “§ 220.8 of this part”.

22. Revise § 220.22 to read as follows:

#### **§ 220.22 Information collection/recordkeeping—OMB assigned control numbers.**

7 CFR section where requirements are described	Current OMB control number
220.3(e)	0584-0067
220.7(a),(d), (e)	0584-0012
220.8(a)(3), (o)	0584-0012
220.9(a)	0584-0012

220.11 (a)-(b)	0584-0012
220.13 (a-1), (b), (c), (e), (f)	0584-0012 0584-0594
220.14(d)	0584-0012
220.15	0584-0012

## **PART 235 – STATE ADMINISTRATIVE EXPENSE FUNDS**

23. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

24. In § 235.2, add in alphabetical order a definition for “Large school food authority” to read as follows:

### **§ 235.2 Definitions.**

\* \* \* \* \*

Large school food authority means, in any State:

- (1) All school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 40,000 children or more each; or
- (2) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 2,000 children or more each.

\* \* \* \* \*

**Dated: June 13, 2016.**

Yvette S. Jackson  
Acting Administrator  
Food and Nutrition Service

